



U.S. Department of Homeland Security
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

May 9, 2019

**COW2018000784 and
NRC2018159375**

Cerissa Cafasso
American Oversight
1030 15th St NW, Ste B255
Washington, DC 20005

Dear Cerissa Cafasso:

This is a response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office relating to e-mails from Director Cissna and Associate Director Higgins, which was assigned control number COW2018000784, and USCIS employee Robert Law, which was assigned control number NRC2018159378.

We have completed the search for responsive records and are currently reviewing and processing records responsive to your request. Records will be provided on a rolling basis in accordance with the parties' agreement. Enclosed is the first production of responsive records, which consists of 406 pages. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5) and (b)(6) of the FOIA.

Exemption (b)(5) provides protection for inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are.

During our review, we also located records that originated with the White House, Department of Homeland Security, Immigration and Customs Enforcement, Department of Justice and U.S. Customs and Border Protection. We have referred the records to that agency for their direct response to you.

Sincerely,

Jill A. Eggleston
Director, FOIA Operations

Referred to another agency
(b)(6)

From: Dale Wilcox [mailto: (b)(6)]
Sent: Wednesday, October 25, 2017 9:46 AM
To: Zadrozny, John A. EOP/WHO (b)(6); Veprek, Andrew M. EOP/WHO
(b)(6)
Subject: [EXTERNAL] Refugee crisis

Good morning gentlemen,

As we've discussed previously, IRLI is very concerned about the role the United Nations High Commissioner for Refugees (UNHCR) is playing in the U.S. refugee process. We believe this role has resulted in the misapplication of U.S. refugee law. IRLI's two retired immigration judge board members have championed this issue and have recently written a short white paper on the topic. Please find the paper attached here for your elucidation.

Please let us know if we can be of further assistance.

Best regards,

Dale L. Wilcox
Executive Director & General Counsel



25 Massachusetts Ave. NW, Suite 335
Washington, DC 20001
Tel: (202) 232-5590
Fax: (202) 464-3590
www.irli.org

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The United States cannot allow the United Nations High Commissioner for Refugees (UNHCR) to continue to make the initial determination of who is approved for refugee status and referred for resettlement in the United States. The U.S. Department of State justifies the UNHCR involvement in our refugee program as being effective and efficient. It is never appropriate to delegate national sovereignty issues to foreign nationals. Persons who are not intimately familiar with the highly complex Immigration & Nationality Act are not capable of making an informed decision about who qualifies for refugee status under our laws. The UNHCR definition of who is eligible for refugee status does not conform to our refugee law as written, and they do not accurately identify genuine refugees who qualify for resettlement in the United States. The failure of the UNHCR to base their determinations on the criteria established in our refugee and asylum laws results in grants of refugee status, resettlement, admission to our country, and permanent residence to aliens who are not statutorily eligible for the protections and benefits of our refugee program.

We must acknowledge the difference between a “United Nations refugee” and a “United States refugee”. Unfortunately there is a tendency by the media and partisan groups to blur that definition and say, “a refugee is a refugee,” but that is simply not the case. A person who is eligible to be sheltered by United States refugee status and allowed to enter the United States is specifically identified by type and category under U.S. law. A United Nations refugee is essentially a displaced person without further consideration of other exclusionary factors.

The Refugee Act of 1980 sets forth the statutory definition of a refugee and the criteria that must be considered in determining whether refugee status should be granted. The definition is clear, concise, and totally focused on protecting those who have been persecuted or have a well-founded fear of persecution by the government or a group that the government is unable or unwilling to control on account of race, religion, nationality, membership in a particular social group, or political opinion. There is no provision for granting refugee status for other humanitarian reasons.

There are certain mandatory grounds which require denial of an application for refugee status. An applicant will be denied if he has persecuted others, committed an aggravated felony in the United States, committed a serious nonpolitical crime outside of the United States, or has been convicted of a particularly serious crime which constitutes a danger to the community. An applicant who has firmly

resettled in a third country or is considered a security risk to the United States may not receive refugee status. An applicant cannot be admitted to the United States if that applicant is inadmissible under our immigration laws. The definition of a refugee under U.S. law does not include economic migrants or persons displaced by civil war or civil strife or victims of crimes.

Refugee admission and resettlement policies must be in conformity with statutory requirements and other provisions of the Immigration and Nationality Act. There has been no delegation of authority to the executive branch to eliminate the threshold requirements for refugee status, broaden or replace the statutory definition of refugee, or change the grounds for refugee inadmissibility. However, there were many attempts by the previous administration to expand the definition of refugee and broaden the scope of refugee programs by executive policies and orders which greatly increased the numbers and classes of migrants who benefited from the refugee program.

The UNHCR must not be allowed to play an instrumental role in influencing the implementation and administration of our refugee program. The UNHCR is not without bias and not without conflict of interest in its involvement in determining who qualifies for resettlement as a refugee in our country.

The UNHCR has long been a strong advocate for expanding refugee status to all classes of migrants. The UNHCR has broadened their definition of refugee to include persons affected by the indiscriminate effects of armed conflict, generalized violence, crime, or other manmade disasters. The UNHCR mandates that applicants who may be vulnerable and have special needs, applicants manifestly in need of protective intervention, victims of torture and trauma, and women with special needs are entitled to refugee protection. The difference here is that while these groups may need UNHCR protection, they do not necessarily qualify for refugee status under U.S. law.

The UNHCR Handbook states that there are situations where large populations are displaced and it would not be possible to make an individual determination of refugee status for each member of the population. In such circumstances, the UNHCR makes a group determination of refugee status whereby each member of the population in question is regarded as *prima facie* eligible as a refugee absent evidence to the contrary. Since the UNHCR uses its own definition of a refugee, uses its own guidelines and criteria in assessing claims, and uses its own procedures and mandates in determining refugee status rather than applying U.S.

law, standards, and procedures, they will grant refugee status to applicants who are clearly ineligible under our refugee law.

The application used by the UNHCR to determine refugee status is clearly inadequate to establish refugee status under our refugee program. It is inadequate not only in terms of the minimal information required to be included in the application, but also in terms of the information which was not requested. The UNHCR application does require information relating to the need for refugee protection. However, little information is required about the crucial issues of concern relating to eligibility for refugee status in the United States. There are only two questions relevant to whether the applicant has been persecuted or has a well-founded fear of persecution by the government or by a group the government is unable or unwilling to control:

1. Why did you leave your home country?
2. What do you believe would happen to you or members of your household if you returned to your home country? Explain why.

The applicant is not even asked if he/she has been persecuted based on one of the five grounds enumerated in U.S. refugee law or who was the persecutor. The application does not require disclosure of information relating to the bars to refugee status, criminal history, terrorist activities, or national security concerns.

Senior U.S. government officials deny that the UNHCR is selecting the applicants for resettlement in our nation. It is evident, however, that the UNHCR makes the critical initial determination of refugee eligibility and great deference is given to that determination as U.S. officials do their processing and make the ultimate determination of refugee status. This processing includes background national security checks for terrorism, crime, and grounds of inadmissibility. There are no observable indications that U.S. officials challenge the UNHCR refugee status determination or make independent inquiries to ensure that all applicants meet all statutory eligibility requirements for refugee status and resettlement in the United States.

The involvement of UNHCR in our refugee program must be eliminated to achieve the President's immigration policy objectives to ensure safe and lawful admissions, defend the safety and security of our country, and protect American workers and taxpayers.

Most of the world's crises are in fact mass migration crises driven by economic or political factors which do not qualify the affected groups to immigrate as refugees under U.S. law. We cannot accept a refugee system which allows every individual to immigrate internationally just to avoid hardship in his or her home country and move at will to a different country of one's choice.

From: Cissna, Francis
Sent: Monday, October 30, 2017 2:41 PM
To: Nuebel Kovarik, Kathy
Subject: RE: Role of UNHCR in USRAP
Attachments: Refugee Crisis.docx (b)(5)

From: Nuebel Kovarik, Kathy
Sent: Monday, October 30, 2017 1:50 PM
To: Veprek, Andrew M. EOP/WHO; Cissna, Francis
Cc: Zadrozny, John A. EOP/WHO; Bash, Zina G. EOP/WHO; Wetmore, David H. EOP/WHO; Whetstone, Trevor D. EOP/WHO
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Kathy Nuebel Kovarik
Chief, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Direct: [REDACTED]
Cell: [REDACTED] (b)(6)

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Referred to another agency

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Sent: Wednesday, October 25, 2017 9:46 AM (b)(6)
To: Zadrozny, John A. EOP/WHO [REDACTED]; Veprek, Andrew M. EOP/WHO [REDACTED]
Subject: [EXTERNAL] Refugee crisis (b)(6)

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Referred to another agency

From: Nuebel Kovarik, Kathy [mailto: (b)(6)]
Sent: Monday, October 30, 2017 5:30 PM
To: Veprek, Andrew M. EOP/WHO < (b)(6)>
Cc: Zadrozny, John A. EOP/WHO < (b)(6)> Bash, Zina G. EOP/WHO
(b)(6) Wetmore, David H. EOP/WHO < (b)(6)>
Whetstone, Trevor D. EOP/WHO < (b)(6)>; Cissna, Francis
(b)(6)
Subject: RE: Role of UNHCR in USRAP (b)(6)

I discussed with Francis a bit. I would like to drop Francis and bring in Jennifer Higgins. (b)(6)

(b)(6) Jennifer Higgins will be key to that discussion, I think.

Kathy Nuebel Kovarik
Chief, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Direct (b)(6)
Cell (b)(6)

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To: Veprek, Andrew M. EOP/WHO [REDACTED]; Cissna, Francis [REDACTED]
Cc: Zadrozny, John A. EOP/WHO [REDACTED]; Bash, Zina G. EOP/WHO [REDACTED]; Wetmore, David H. EOP/WHO [REDACTED]; Whetstone, Trevor D. EOP/WHO [REDACTED]
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Sent: Wednesday, October 25, 2017 9:46 AM
To: Zadrozny, John A. EOP/WHO [REDACTED]; Veprek, Andrew M. EOP/WHO [REDACTED]

[REDACTED] (b)(6)
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Please let us know if we can be of further assistance.

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From: Cissna, Francis
Sent: Wednesday, November 29, 2017 7:46 AM
To: Ries, Lora L; Nuebel Kovarik, Kathy
Subject: RE: Thursday panel. Anyone else we can invite from USCIS??

By all means attend (don't be on the panel, though). Recall, POTUS endorsed the RAISE Act. We did send technical assistance, right? I am still perplexed by some of the provisions in the bill, which I hope are improved, assuming they pay attention to our technical assistance. Anyway, do go if you can and bring along some junior OP&S staffer so they can hear all of it. And say hi to the gregarious Teitelbaum for me. I know him well and he's an excellent fellow. Teitelbaum is also one of the key people that has studied the "STEM shortage" issue (he doesn't think there is one):

<https://www.theatlantic.com/education/archive/2014/03/the-myth-of-the-science-and-engineering-shortage/284359/>.

From: Ries, Lora L
Sent: Tuesday, November 28, 2017 11:22 PM
To: Nuebel Kovarik, Kathy; Cissna, Francis
Subject: RE: Thursday panel. Anyone else we can invite from USCIS??

Why not?

Lora Ries
Chief of Staff
U.S. Citizenship and Immigration Services
Department of Homeland Security

(b)(6) [REDACTED] (c)

From: Nuebel Kovarik, Kathy
Sent: Tuesday, November 28, 2017 11:20 PM
To: Ries, Lora L; Cissna, Francis
Subject: FW: Thursday panel. Anyone else we can invite from USCIS??

WDYT? I could go, maybe get recognized, but not sit on the panel. ?

From: Marguerite Telford [mailto:[REDACTED]] (b)(6)
Sent: Tuesday, November 28, 2017 2:28 PM
To: Nuebel Kovarik, Kathy
Subject: Thursday panel. Anyone else we can invite from USCIS??

Immigration Fixes: From the Jordan Commission to the RAISE Act

*U.S. Senator David Perdue and Jordan Commission Vice Chair
discuss legal immigration policy*

The Center for Immigration Studies will host an **invitation-only** panel discussion on **Thursday, November 30**, focusing on past and present attempts to change the immigration system. The speakers will include U.S. Senator David Perdue (R-Ga), co-author of the Reforming American Immigration for a Strong Economy (RAISE) Act, Michael Teitlebaum, Vice Chairman of the bipartisan U.S. Commission on Immigration Reform (which was the last officially appointed advisory group to offer detailed immigration recommendations chaired by the late civil rights icon Barbara Jordan), and Jessica Vaughan, Director of Policy Studies at the Center for Immigration Studies and author of an extensive report on chain migration.

The debate over the Deferred Action for Childhood Arrivals Program has brought the issue of chain migration, and legal immigration in general, to the forefront. While the RAISE Act and the recommendations of the Jordan Commission differ in certain respects, both seek to end chain migration by focusing on the nuclear family and put an emphasis on skills useful to the United States. Senator Perdue, Dr. Teitelbaum, and Ms. Vaughan will discuss these issues and more.

WHAT: Panel discussion on proposed legal immigration reforms.

WHEN: Thursday, November 30, 2017, at 9 a.m.

WHERE: National Press Club, Lisagor Room, 529 14th St, NW, 13th Floor, Washington, D.C.

WHO:

U.S. SENATOR DAVID PERDUE (R-GA)

David Perdue is the only Fortune 500 CEO in Congress and is serving his first term in the United States Senate, where he represents Georgia on the Armed Services, Banking, Budget, and Agriculture Committees. He is a co-author of the Reforming American Immigration for Strong Employment (RAISE Act) and a congressional leader on legal immigration reform.

DR. MICHAEL TEITLEBAUM

Michael Teitlebaum served as Vice Chair and Acting Chair of the U.S. Commission on Immigration Reform ("the Jordan Commission"). An internationally recognized expert on migration, he is a senior advisor to the Alfred P. Sloan Foundation, a Wertheim Fellow at Harvard Law School, and a member of the Center of Migration Studies Board of Trustees.

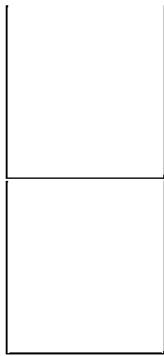
JESSICA VAUGHAN

Jessica Vaughan is Director of Policy Studies at the Center for Immigration Studies and author of a recent report, "Immigration Multipliers: Trends in Chain Migration", which examines the impact of the U.S. family-based immigration system.

MARK KRIKORIAN (Moderator)

Executive Director, Center for Immigration Studies

RSVP: This invitation is non-transferable and RSVPs are required to attend. Please RSVP to Marguerite Telford, mrt@cis.org, by Wednesday, November 29. Attendees should be prepared to show valid ID or press credentials and the attached code for admittance to the event.



--

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Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

From: Nuebel Kovarik, Kathy
Sent: Monday, January 22, 2018 3:27 PM
To: Cissna, Francis; Stoddard, Kaitlin V
Subject: RE: [EXTERNAL] Will gang members get amnesty? 500 Ex-DACA Criminals and Gang Members at Large

Wait – we did publish it here – in PDF.

<https://www.uscis.gov/daca2017>

From: Cissna, Francis
Sent: Monday, January 22, 2018 4:19 PM
To: Nuebel Kovarik, Kathy; Stoddard, Kaitlin V
Subject: RE: [EXTERNAL] Will gang members get amnesty? 500 Ex-DACA Criminals and Gang Members at Large

So the data isn't accurate?

From: Nuebel Kovarik, Kathy
Sent: Monday, January 22, 2018 4:15:49 PM
To: Cissna, Francis; Stoddard, Kaitlin V
Subject: RE: [EXTERNAL] Will gang members get amnesty? 500 Ex-DACA Criminals and Gang Members at Large

No, we gave out but then OPA took issue with it! So, it's not published anywhere. I'll share the info with Jon, if KS hasn't already.

From: Cissna, Francis
Sent: Monday, January 22, 2018 3:54 PM
To: Nuebel Kovarik, Kathy; Stoddard, Kaitlin V
Subject: FW: [EXTERNAL] Will gang members get amnesty? 500 Ex-DACA Criminals and Gang Members at Large

Is the Grassley data something we've published?

Referred to Immigration and Customs Enforcement

Referred to Immigration and Customs Enforcement

Referred to another agency

(b)(6)

(b)(6)

From: Marguerite Telford [mailto:[REDACTED]]

(b)(6)

Sent: Monday, January 22, 2018 10:31 AM

To: Zadrozny, John A. EOP/WHO [REDACTED]

Subject: [EXTERNAL] Will gang members get amnesty? 500 Ex-DACA Criminals and Gang Members at Large

500 Ex-DACA Criminals & Gang Members Still At Large: Will They Get Amnesty Too?

FacebookTwitterGoogle+EmailPrint

By Jessica Vaughan on January 22, 2018

More than 500 individuals who obtained DACA benefits that were later revoked due to criminal and/or gang involvement apparently are still living in the country and at large, according to statistics provided by USCIS to Sen. Chuck Grassley, chairman of the Senate Judiciary Committee. These cases are 25 percent of those who lost DACA status due to criminal and/or gang activity as of November 2017. Only about 30 percent of the ex-DACA criminal aliens have been removed or were in ICE custody as of November 2017.

According to USCIS, a total of 2,127 individuals had their DACA status terminated for criminal activity and/or gang activity as of November 22, 2017. In no more than 3 percent of these cases did the termination occur merely because of gang involvement; nearly all of the terminations followed criminal convictions or arrests, according to related data on the USCIS [website](#).

USCIS provided the following breakdown of the outcome of the cases of these DACA terminations:

- Removed from the United States: 562
- In ICE Custody: 90
- Released from ICE Custody: 535
- No Record of Removal, Detention or Release by ICE: 940
- Total: 2,127

While it is reassuring that USCIS is revoking DACA benefits for criminal gang members it identifies, it is concerning that almost as many criminal alien DACA beneficiaries have been released as have been removed to their home country. Most of the terminations occurred more than a year before these statistics were compiled. I assume that at least some of the 940 criminals who had DACA but who have not been removed are still in state or local custody serving time, but it is possible, even likely, that some were released by sanctuary jurisdictions, and ICE has not re-apprehended them.

USCIS also provided a list of more than 45 gang affiliations of the ex-DACA criminals. It includes some of the most violent and dangerous gangs in the United States, such as MS-13, 18th Street, the Latin Kings, and the Trinitarios. It includes some lesser-known gangs as well, with names like Last Generation Korean Killers and Maniac Latin Disciples.

USCIS has not released information on where these gang members were living, but the gang names sometimes identify their location: Oakland 30 Nortenos, Orange County, Angelino Heights Surenos, East San Diego, Inland Empire, Pacoima Van Nuys Boys, and West Merced Nortenos, all of which are presumably in California.

Under current law, gang members are not automatically barred from receiving immigration benefits such as green cards, work permits, and Temporary Protected Status, and clearly many have obtained these benefits in recent years. A fix to this loophole should be a non-negotiable element of any bill that gives amnesty to DACA recipients. The bill sponsored by several House Republican immigration committee leaders (including Goodlatte, Labrador, McCaul, and McSalley), known as the Securing America's Future Act, includes a section that would update the law so that criminal gang members would be barred from all immigration benefits, including the DACA amnesty, and be inadmissible and deportable. **This fix also is on the White House list of urgent priorities for immigration reform.**

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Referred to Immigration and Customs Enforcement

Referred to another agency

(b)(6)

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(b)(6)

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Referred to another agency

From: Marguerite Telford [REDACTED]
Sent: Friday, March 30, 2018 2:15 PM (b)(6)
To: Wold, Theo J. EOP/WHO [REDACTED]; Zadrozny, John A. EOP/WHO
[REDACTED]
Subject: [EXTERNAL] Central Americans

I have heard that the 1000-1500 Central Americans headed this way are being trained on what to say (credible fear) to be allowed entry. Who is funding this?

CBP and USCIS asylum officers will be the first contact. I am sure Cissna is on top of this . . . we are screening every single person? Obama would have waved them in!

Mexico is just waving them through . . . has Mexico been given a heads-up to have a plan to take care of all of these folks since we won't be letting them in.

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From: Cissna, Francis
Sent: Friday, March 30, 2018 2:24 PM
To: Zadrozny, John A. EOP/WHO; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

Yes, there is a 1,500+ person “refugee caravan” from Honduras, Guatemala, and El Salvador that is expected to reach the U.S. border at various California Ports of Entry in early April. (See article pasted below.) Here is video of the group crossing a Mexican border checkpoint on March 26: <https://www.facebook.com/PuebloSF/videos/2106857236007633/>.

A 'Refugee Caravan' Is Headed to the U.S. and Getting Bigger Every Day

Jorge Rivas



Image: Pueblo Sin Fronteras

An estimated 1,500 migrants from Honduras, Guatemala, and El Salvador started a month-long journey on Sunday to the United States, where they intend to seek political asylum. Organizers say the “refugee caravan” includes many women, unaccompanied minors, and entire families who are migrating through Mexico any way they can.

The migrants started their journey in Tapachula, Chiapas, near the Guatemala–Mexico border around 7 AM on Sunday. They walked, took public transportation, and hitchhiked their way to their first destination in the town of Huixtla, where many of the migrants camped outdoors. Their entire journey is more than 2,000 miles long.

“The turnout surprised all of us,” Rodrigo Abeja, a Mexico-based organizer with Pueblo Sin Fronteras, the immigrant rights group behind the caravan, told Splinter. Abeja said the group’s most recent caravans last year only had about 450 migrants. About 80% of the migrants in this latest caravan are from Honduras; Abeja speculated that the swelling numbers could be due to recent political instability in that country.

The caravan comes just months after the Trump administration has called for a stricter vetting process for asylum seekers.

Abeja said the caravan has grown as migrants learn about the group as it journeys through Mexico.

So far, the critical mass of migrants marching through towns seems to be working. On Facebook, the group claimed the caravan is so large that Mexican immigration officials on Sunday abandoned a check point.

Abeja said there are month-old infants being carried by young mothers alongside elders in their seventies who are making the journey. There’s also a small contingent of people who identify as LGBTQ.

He said most migrants are escaping political persecution and gang violence.

Those participating in the caravan will attend workshops to prepare them to request asylum when they reach the U.S. The migrants are expected to reach U.S. points of entries in California sometime next month.

Abeja said the number of people on this journey illustrates the desperation people have to stay alive.

“The journey is extreme. People say that if they stay where they are they’ll die. So they’re here because they’re trying to stay alive,” Abeja said.

The next stop for the group is in the town of Mapastepec, where, according to Pueblo Sin Fronteras, a local school has agreed to shelter the refugee caravan.

<https://splinternews.com/a-refugee-caravan-is-headed-to-the-u-s-and-getting-big-1824087413>

See also: <https://www.telesurtv.net/english/news/Central-American-Migrants-in-Struggle-Caravan-Heads-to-Mexico-US-for-Dignity-Asylum-20180326-0006.html>

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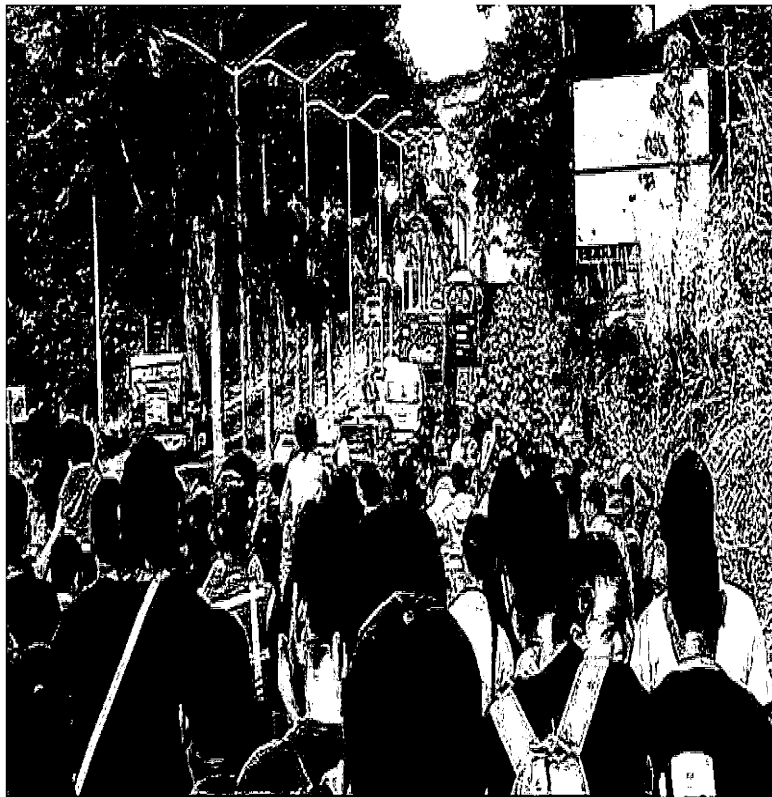
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From: Stoddard, Kaitlin V
Sent: Friday, March 30, 2018 2:45 PM
To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

Noted.

From: Cissna, Francis
Sent: Friday, March 30, 2018 3:40 PM
To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

Don't think we'd want to say the highlighted portion publicly.

From: Stoddard, Kaitlin V
Sent: Friday, March 30, 2018 3:40 PM
To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

Makes sense. I will make sure Paul talks to OPA. The woman from CIS is right—literally no media coverage on this.

From: Cissna, Francis
Sent: Friday, March 30, 2018 3:38 PM
To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

I emailed with Homan and McAleenan and they said S1 is well aware of this, so I decided not to send my email.

From: Stoddard, Kaitlin V
Sent: Friday, March 30, 2018 3:36 PM
To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

(b)(5)

(b)(5)

[Redacted]

From: Cissna, Francis

Sent: Friday, March 30, 2018 3:33 PM

To: Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T; Stoddard, Kaitlin V

Subject: RE: [EXTERNAL] Central Americans

Removing JZ and adding Kaitlin.

S1 is indeed aware. ICE and CBP too. Any reaction to this must, I think, come from DHS HQ, or at least be led by CBP. Unfortunately, as Jennifer Higgins has said, [Redacted]

[Redacted]

(b)(5)

Referred to another agency

[Redacted]

Referred to another agency

From: Cissna, Francis [REDACTED]
Sent: Friday, March 30, 2018 3:24 PM (b)(6)
To: Zadrozny, John A. EOP/WHO [REDACTED]; Nuebel Kovarik, Kathy
[REDACTED]; Symons, Craig M [REDACTED]; Law, Robert
T [REDACTED]
Subject: RE: [EXTERNAL] Central Americans

Yes, there is a 1,500+ person "refugee caravan" from Honduras, Guatemala, and El Salvador that is expected to reach the U.S. border at various California Ports of Entry in early April. (See article pasted below.) Here is video of the group crossing a Mexican border checkpoint on March 26: <https://www.facebook.com/PuebloSF/videos/2106857236007633/>.

A 'Refugee Caravan' Is Headed to the U.S. and Getting Bigger Every Day

Jorge Rivas
[3/26/18]



Image: Pueblo Sin Fronteras

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The caravan comes just months after the Trump administration has called for a stricter vetting process for asylum seekers.

Abeja said the caravan has grown as migrants learn about the group as it journeys through Mexico.

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Referred to another agency

From: Marguerite Telford <[REDACTED]>
Sent: Friday, March 30, 2018 2:15 PM (b)(6)
To: Wold, Theo J. EOP/WHO <[REDACTED]>; Zadrozny, John A. EOP/WHO
[REDACTED]
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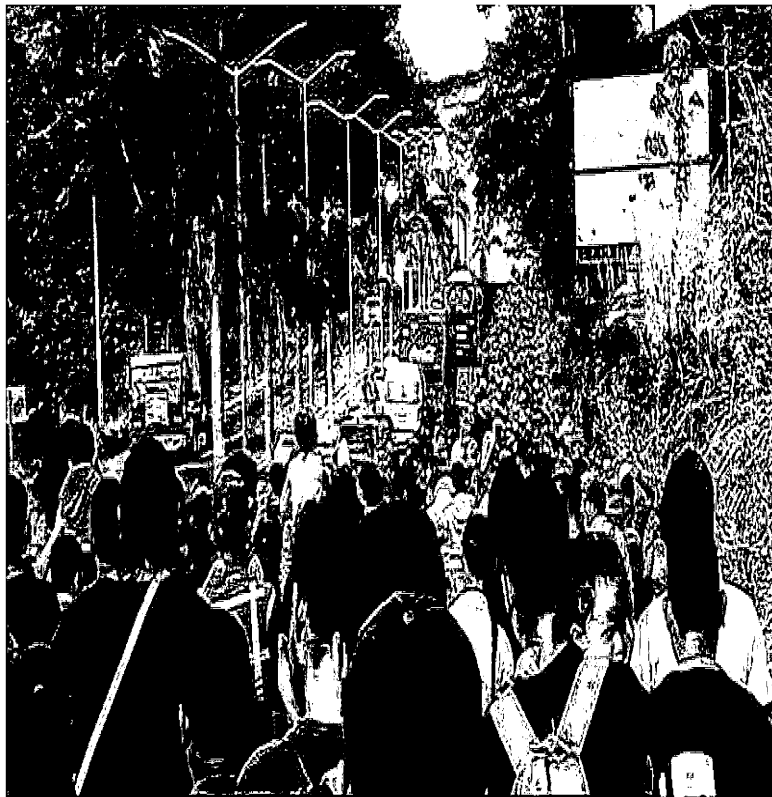
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From: Cissna, Francis
Sent: Friday, March 30, 2018 2:52 PM
To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans
Attachments: Carl's Credible Fear Fixes; RE: Carl's Credible Fear Fixes

(b)(5)

From: Stoddard, Kaitlin V
Sent: Friday, March 30, 2018 3:36 PM
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To: Zadrozny, John A. EOP/WHO [REDACTED]; Nuebel Kovarik, Kathy

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Sent: Friday, March 30, 2018 2:15 PM (b)(6)

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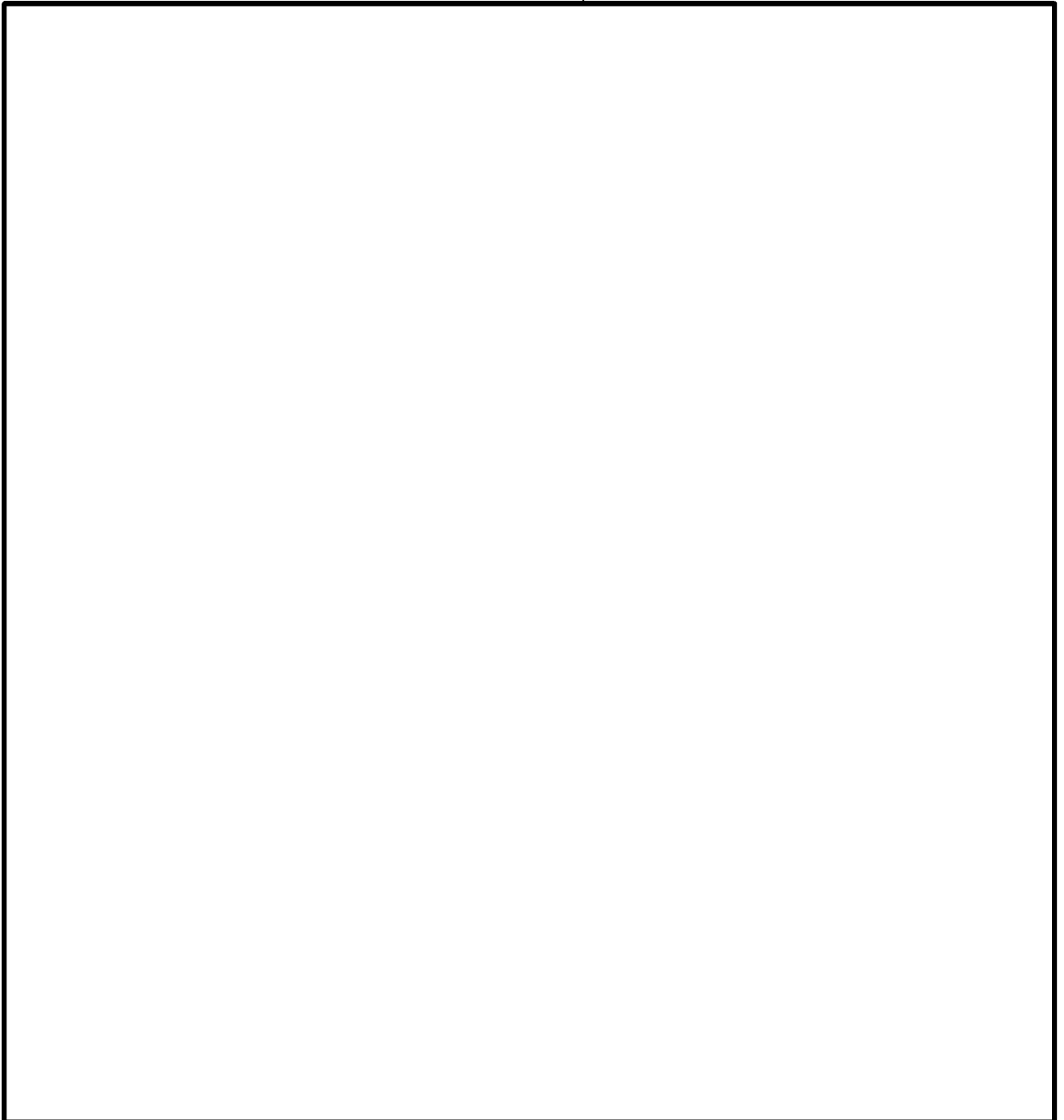
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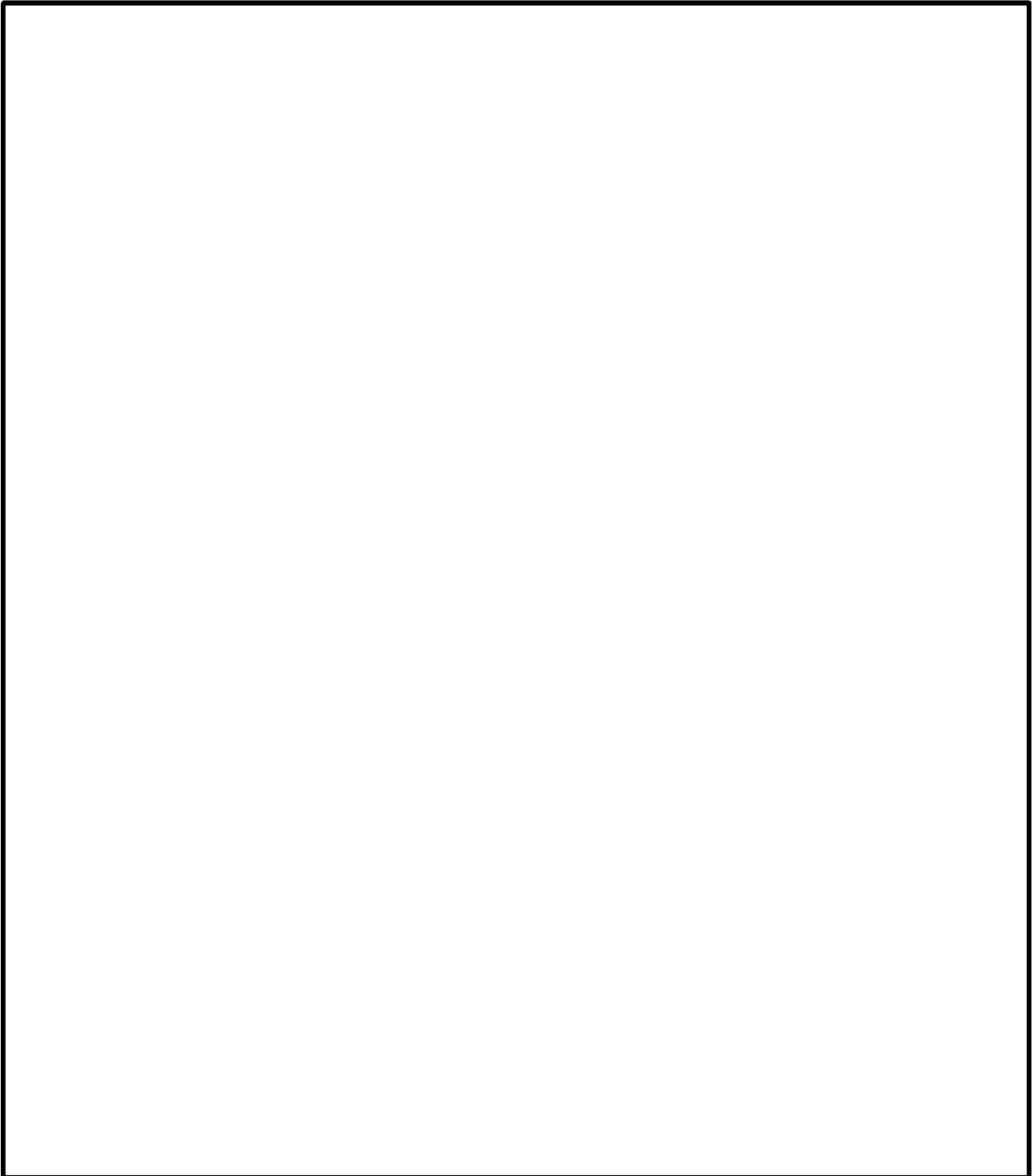
From: Nuebel Kovarik, Kathy
Sent: Friday, February 16, 2018 12:11 PM
To: Stoddard, Kaitlin V; Symons, Craig M; Cissna, Francis
Subject: Carl's Credible Fear Fixes
Attachments: CFPM_2016-10-25.pdf

From: Risch, Carl C
Sent: Monday, March 06, 2017 3:53 PM
To: Symons, Craig M; Nuebel Kovarik, Kathy
Subject: RE: Feedback on CF/RF Training

(b)(5)



(b)(5)



From: Kim, Ted H

Sent: Sunday, March 05, 2017 10:57 AM

To: Risch, Carl C; Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy

Subject: RE: Feedback on CF/RF Training

I forgot to note that certain provisions in the SOP have been superseded by memos and other guidance that have not yet been incorporated into the SOP. In the supervisory review section, for example, we have not yet updated the language about all negative determinations coming to

HQ. That requirement was superseded by guidance several years ago that a random sampling of both positive and negative determinations come to HQ for QA review in equal proportions. I will send that guidance to you separately tomorrow, along with our plans for incorporating the separate pieces of guidance into the SOP. We can also brief you in person when we meet to provide more details into what goes into the supervisory review from a QA perspective--things that are not necessarily contained in a procedural document like our CFPM. For now, we just wanted to forward our CFPM to you as promised, so you could see how we organize our procedures apart from our lesson plans.

From: Kim, Ted H
Sent: Sunday, March 05, 2017 9:16:14 AM
To: Risch, Carl C; Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Subject: RE: Feedback on CF/RF Training

Here is the CF SOP. Supervisory review is addressed on p.21. Ted

From: Risch, Carl C
Sent: Saturday, March 04, 2017 9:13 AM
To: Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Thanks, Joanna. If there's a CF SOP which addresses supervisory review, we would like to review it. It can certainly wait until Monday.

Carl

From: Ruppel, Joanna
Sent: Saturday, March 04, 2017 8:08 AM
To: Lafferty, John L; Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Kim, Ted H
Subject: RE: Feedback on CF/RF Training

I will be traveling back to D.C. Tuesday morning and not into the office until around 3:00. But it is fine if you want to meet to discuss without me. Amal Bradly has my calendar if you prefer that I be there and this can wait until I get back.

Also, just want to be sure that the team reviewing the lesson plans also has the SOPs. Asylum generally provides substantive content via lesson plan and procedural guidance via SOP.

Joanna

Joanna Ruppel
Acting Associate Director
USCIS Refugee, Asylum and International Operations



(b)(6)

From: Lafferty, John L
Sent: Friday, March 03, 2017 9:24 PM
To: Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Carl,

Thanks for the response. I don't have access to Joanna's calendar to confirm that she is available at that time, but Ted and I will be available on Tuesday.

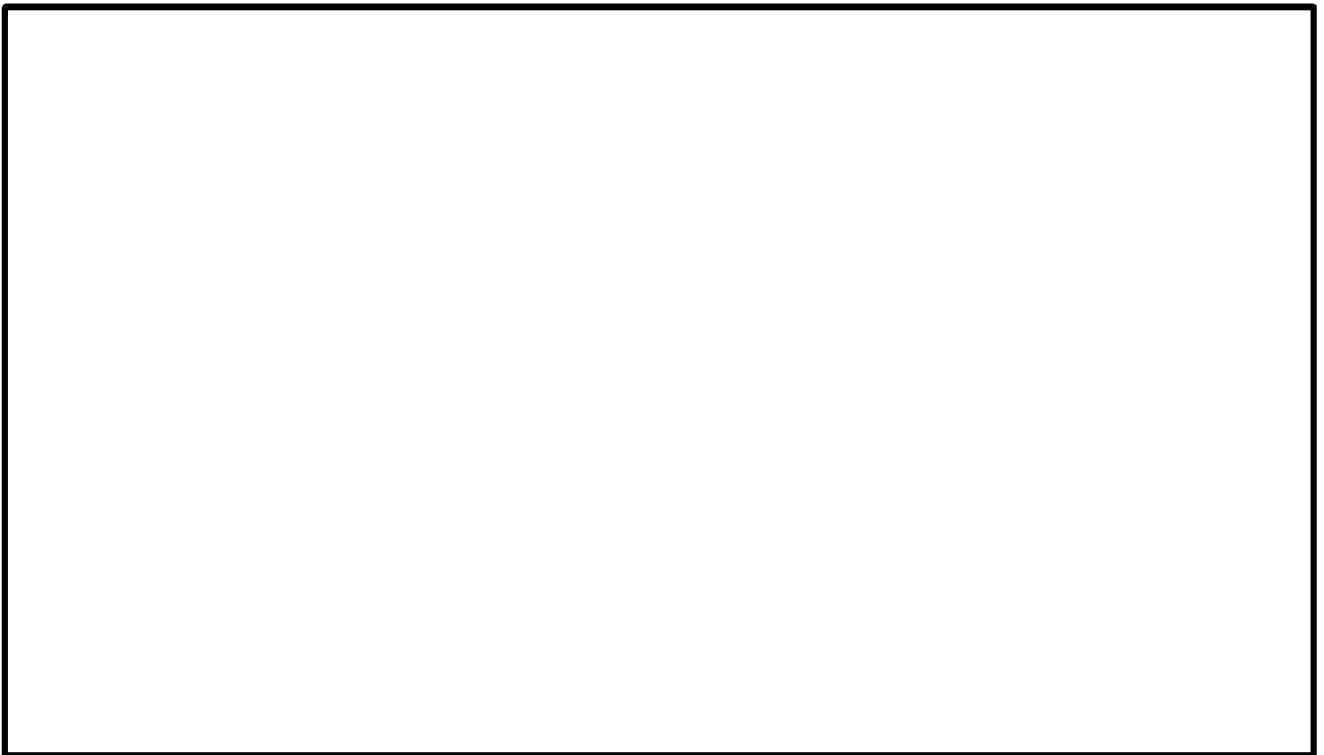
Have a good weekend.

John

From: Risch, Carl C
Sent: Friday, March 03, 2017 8:26 PM
To: Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Could we meet immediately after the Expanded Leadership Meeting on Tuesday?

(b)(5)



Carl

From: Walters, Jessica S

Sent: Friday, February 10, 2017 6:34 PM

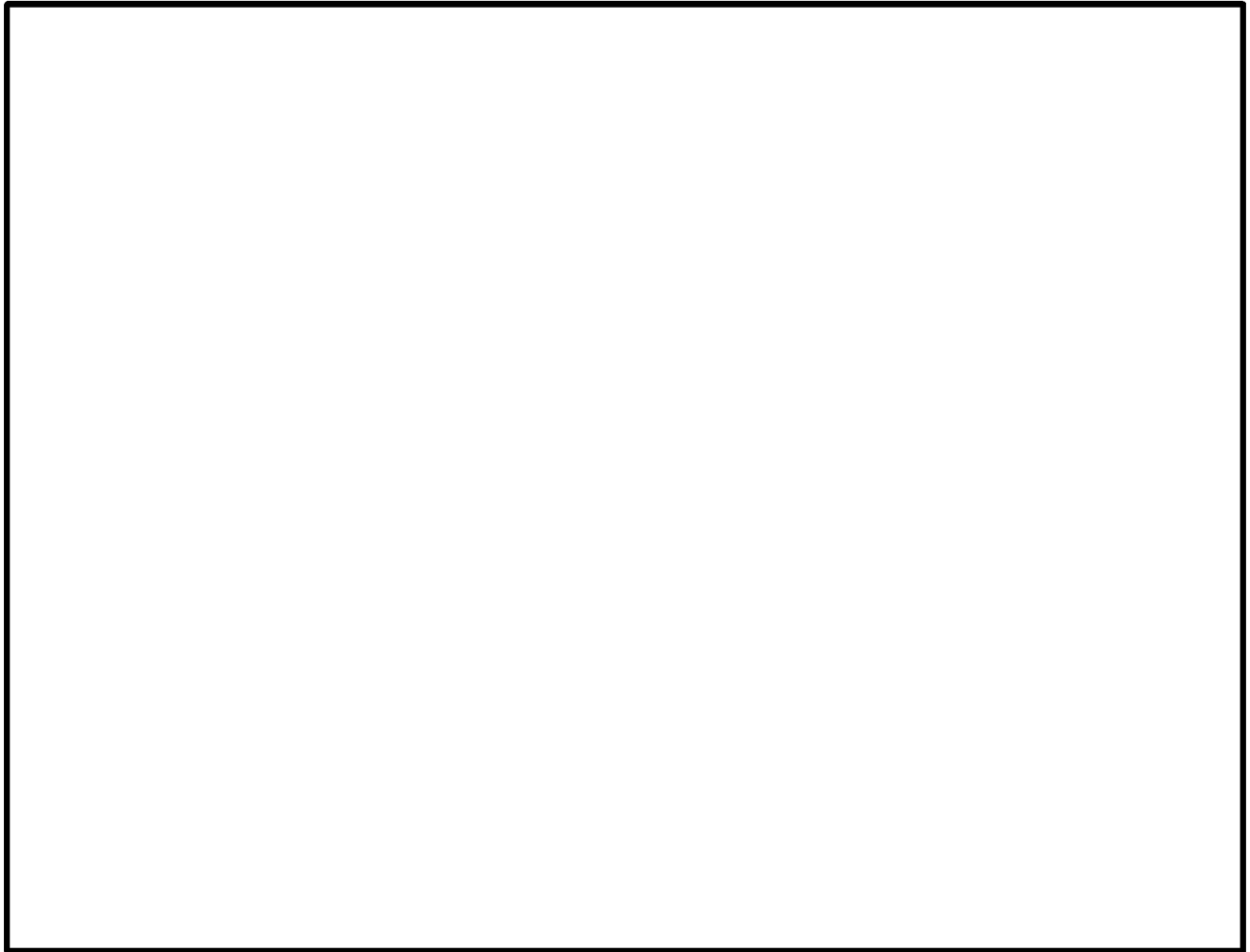
To: Shah, Dimple; Symons, Craig M; Risch, Carl C; Hamilton, Gene; Kovarik Nuebel, Kathy; Maher, Joseph; Nielsen, Kirstjen; Cissna, Tiffany; Higgins, Jennifer

Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S

Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Dimple, Craig and Carl:

(b)(5)



Please let us know if you would like additional information.

Thanks,

Jessica

Jessica S. Walters

Senior Advisor | Office of the Director and Deputy Director

U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security |

Ofc: [REDACTED] | Cell: [REDACTED]

(b)(5)

Referred to Department of Homeland Security

From: Symons, Craig M

Sent: Friday, February 10, 2017 8:21 AM

To: Walters, Jessica S [REDACTED]

(b)(6)

Cc: Scialabba, Lori L [REDACTED]; Renaud, Tracy L [REDACTED];

Young, Todd P [REDACTED]; Walters, Jessica S [REDACTED];

Shah, Dimple [REDACTED]; Hamilton, Gene [REDACTED]; Kovarik

Nuebel, Kathy [REDACTED]; Risch, Carl C [REDACTED]; Maher,

Joseph [REDACTED]; Cissna, Tiffany [REDACTED]; Nielsen, Kirstjen

[REDACTED]; Hamilton, Gene [REDACTED]; Higgins, Jennifer

(b)(6)

Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Jessica,

Attached please find the consolidated thoughts and concerns that Dimple, Carl, and I have. Dimple and Carl – please let us know if I missed anything.

Thank you,
Craig

From: Nielsen, Kirstjen

Sent: Friday, February 10, 2017 12:14 AM

To: Walters, Jessica S; Hamilton, Gene; Higgins, Jennifer

Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S; Shah, Dimple; Hamilton, Gene; Kovarik Nuebel, Kathy; Symons, Craig M; Risch, Carl C; Maher, Joseph; Cissna, Tiffany

Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Jessica

I have cced Gene, Dimple, Kathy, Craig,

Carl and Joe whom I ask to send comments and thoughts directly. I was collecting but this will be more efficient. Then I will send through exec sec process.

All- pls send Jessica thoughts as soon as possible

Thx

From: Walters, Jessica S
Sent: Thursday, February 09, 2017 2:02:41 PM
To: Hamilton, Gene; Nielsen, Kirstjen; Higgins, Jennifer
Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S
Subject: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Good afternoon:

Please find attached USCIS' briefing memo regarding updates to the Credible Fear and Reasonable Fear lesson plans, signed by Acting Director Lori Scialabba. Also attached are executive summaries of the changes to the lesson plans.

Please let us know if you have any questions.

Thanks,

Jessica

Jessica S. Walters
Senior Advisor | Office of the Director and Deputy Director
U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security |
Ofc: [REDACTED] Cell: [REDACTED]

(b)(6)

From: Lafferty, John L
Sent: Friday, March 03, 2017 1:37 PM
To: Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: FW: Feedback on CF/RF Training

Kathy, Carl and Craig,

I thought that it might be useful for us to meet to have a follow-up discussion on the issues highlighted below and in the attached document. Please let me know if you would like to meet and discuss in greater detail. I'm in all next week and we will do everything that we can to work around your busy schedules.

John

From: Farnam, Julie E
Sent: Wednesday, March 01, 2017 4:06 PM
To: Lafferty, John L; Kim, Ted H
Cc: Ruppel, Joanna
Subject: Feedback on CF/RF Training

John/Ted—

(b)(5)



If you'd like to set up a meeting with Carl, Kathy, and Craig, to discuss further please let me know.

Thank you,
Julie Farnam
Senior Advisor
Field Operations Directorate
U.S. Citizenship and Immigration Services

(d)  (b)(6)
(c)

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I.A. MANUAL CONTENTS

**Reviewed, No Substantive
Changes since 2002**

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This Manual provides information on how to proceed with credible fear of persecution or torture determinations for aliens subject to expedited removal from the United States pursuant to section 235 of the Immigration and Nationality Act (INA), and alien stowaways who are processed pursuant to 8 CFR 235.1(d)(4). Unless specifically indicated, an asylum office Director determines which personnel (i.e., Asylum Officer, Asylum Clerk) perform certain procedures outlined in

this Manual.

The Manual is divided into four (4) sections. The first section, "Background Information," lists references that all asylum personnel should be familiar with in order to process a credible fear claim. The second section, "The Expedited Removal Process," illustrates how an Immigration and Naturalization Service (INS) Inspector places an alien into the credible fear part of the expedited removal process. The third section, "The Credible Fear Process," follows the processing of a credible fear claim from the time an INS district officer refers the alien to the asylum office until the asylum office files the appropriate documents, if any, with the Immigration Court, or returns the case to Deportation for execution of an expedited removal order.

The fourth and most lengthy section, "Expanded Topics," provides more detail on some topics referred to in previous sections, and includes new subjects that bear upon the processing of a credible fear claim. While it is not possible to anticipate all possible issues that may arise in the credible fear program, this section addresses the most common.

Unless otherwise noted, "aliens" in this Manual refers to both aliens in expedited removal and stowaways.

I.B. REFERENCES

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

1. Written Materials

This Manual is the main procedural guide to the credible fear process. Other reference materials are available to asylum office personnel and may be consulted for procedural guidance on other issues that may affect an alien in the credible fear process:

- Affirmative Asylum Procedures Manual
- ABC/NACARA Procedures Manual
- APSS User's Manual
- User's Guide to Entering Information in the Asylum Pre-Screening System (APSS)
- Inspector's Field Manual
- AOBTC Basic Training Materials (specific lesson plans are referred to in this Manual)
- Immigration and Naturalization Service Easy Research & Transmittal System (hereinafter referred to as INSERTS). INSERTS is a CD-ROM that contains INS field manuals, administrative manuals, legal opinions and laws and regulations. It may also be accessed through the INS Intranet.

2. Legal Authorities

The credible fear process is governed by:

- Immigration and Nationality Act (INA)
- Title 8, Code of Federal Regulations (8 CFR)
- Precedent Board of Immigration Appeals (BIA) decisions
- Precedent Federal Court decisions (including U.S. District Courts, U.S. Courts of Appeal, and the U.S. Supreme Court)
- INS General Counsel (GENCOU) Opinions.

3. Computer Databases

The Asylum Pre-Screening System (APSS) tracks the processing of a credible fear case. Many of its commands and screens are based upon those found in the Refugee, Asylum and Parole System (RAPS). Asylum office personnel have access to update and change information in APSS.

Asylum office personnel may wish to consult other databases to see if they contain any information about an alien in the credible fear process. These databases include:

- Refugee Asylum and Parole System (RAPS)
- Central Index System (CIS)
- Deportable Alien Control System (DACS)
- Computer Linked Information Management System (CLAIMS 3)
- National Automated Immigration Lookout System II (NAILS II)
- Nonimmigrant Information System (NIIS).

See the Affirmative Asylum Procedures Manual section on computer databases for a description of these systems.

4. Acronyms

The credible fear process is commonly referred to as the APSO program. "APSO" stands for Asylum Pre-Screening Officer, a term coined by the Headquarters Asylum Division when Asylum Officers first began screening Haitian migrants for credible fear of persecution claims in Guantanamo Bay during 1991 – 1992.

A Supervisory Asylum Officer in charge of executing the day-to-day functions of an asylum office's APSO program is referred to in this manual as a Supervisory Asylum Pre-Screening Officer (SAPSO). An Asylum Officer who makes credible fear determinations is referred to in this Manual as an Asylum Pre-Screening Officer (APSO).

II.A. SECONDARY INSPECTION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

During secondary inspection, an Inspector records an alien's testimony on Form I-867, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act, Parts A&B. If the Inspector determines that the alien is subject to expedited removal pursuant to section 235 of the INA, he or she completes the top portion of Form I-860, Notice and Order of Expedited Removal. Appendix A: Form I-867 A&B, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act.

Appendix B: Form I-860, Notice and Order of Expedite Removal.

1. Determining whether to Refer an Alien to the Credible Fear Process

During the secondary interview process, an Inspector should refer to an asylum office any alien who indicates either an intention to apply for asylum or a fear of persecution or torture. An Inspector should not assess the merits of an expressed fear, but simply refer to an asylum office all cases where a fear is expressed.

An Inspector should also refer an alien for a credible fear determination if there is any uncertainty about whether the alien expressed a fear of return, even if the Inspector is unable to communicate with the alien, or the alien refuses to talk to the Inspector. Although an Inspector will not be able to complete Form I-867, Parts A&B for an alien with whom he or she is unable to communicate, the Inspector should place a note in the alien-file (A-file), in memorandum format, which describes the particular communication problem, and then refer the alien to an asylum office.

An alien stowaway is not subject to expedited removal. An Inspector must, however, refer to an asylum office for a credible fear determination any alien stowaway who expresses a fear of harm or persecution or who is unable to communicate with an Inspector. The referral procedures are the same for both stowaways and aliens in expedited removal, except that an alien stowaway does not receive a Form I-860.

Appendix C:

Virtue, Paul. INS Office of Programs. Supplemental Training Materials on Credible Fear Referrals, Memorandum to Regional and Expedited Removal "Experts" (Washington, DC: 6 February 1998), 6 p.

See the Inspector's Field Manual on INSERTS for more information about an Inspector's responsibilities.

See this Manual's section IV.K on stowaways for more information on alien stowaways.

a. Alien Does Not Indicate an Intention to Apply for Asylum or a Fear of Persecution or Torture

If the alien does not indicate either an intention to apply for asylum or a fear of persecution or torture, INS may order the alien removed if the alien is otherwise subject to expedited removal. An Inspector completes the bottom portion (the top portion should already be complete) of Form I-860 and serves it on the alien along with a Form I-296, Notice to Alien Ordered Removed. Appendix D: Form I-296, Notice to Alien Ordered Removed.

b. Alien Does Indicate an Intention to Apply for Asylum or a Fear of Persecution or Torture

If an alien does indicate an intention to apply for asylum or a fear of persecution or torture, the Inspector places the alien into the credible fear process according to procedures in the following section.

2. Placing an Alien into the Credible Fear Process

Once an Inspector has determined that an alien requires a credible fear determination, she or he takes the following action:

- Ensures only the top portion of Form I-860 is complete, which includes the ground(s) of inadmissibility under which the INS is charging the alien and a narrative description of each charge.
- Gives the alien a Form M-444, Information About Credible Fear Interview. The form must be explained to the alien in a language she or he understands.
- The alien must sign and date two (2) copies of the M-444. If the alien refuses to sign, the officer serving the form must date and initial the form, and write "[name of alien] refused to sign" on the line where the alien's signature should appear.
- Gives one (1) of the signed (or refused to sign) copies to the alien.
- Places one (1) of the signed (or refused to sign) copies in the individual's A-file.
- Provides the alien with a list of free legal services providers. Form I-860 does not pertain to stowaways, however, stowaways receive Form M-444.

Appendix E: Form M-444, Information About Credible Fear Interview

II.B. CREATING AN ALIEN FILE (A-File)

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Unless an A-number already exists for an alien, an Inspector must assign an A-number to the alien by creating an A-file. Entry of an A-number and preliminary information obtained from the A-file into CIS is accomplished according to local INS district office policy.

If an alien is ordered removed and is removed without ever being detained, Inspections staff enters the case into DACS. If an alien requires detention at any time during the expedited removal process, Detention staff enters the case into DACS.

III.A. INS DISTRICT OFFICE DETAINS ALIEN FOR A CREDIBLE FEAR DETERMINATION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

8 CFR 235.3(b)(2)(iii) requires the detention of an alien whose inadmissibility is being considered or who has been ordered removed. Therefore, the alien's detention is mandatory, unless parole of the individual is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Once an Inspector places an alien into the credible fear process, the responsibility for the alien's detention lies with Detention staff. See this Manual's section IV.C, Expanded Topics, Detention and Parole of Aliens, for more information on detention and parole.

III.B. INS DISTRICT OFFICE REFERS ALIEN TO THE ASYLUM OFFICE

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

In the majority of cases, Detention staff is responsible for informing an asylum office that an alien requires a credible fear interview. There may be some instances, however, when an Inspector contacts an asylum office about an alien who requires a credible fear interview. Contact by an Inspector usually occurs when the alien is at a port of entry on the U.S./Canadian or U.S./Mexican border, or when an interview takes place at an airport. The individual responsible for referring the case to the asylum office (e.g., Inspector or Detention Officer) is called a "Referring Officer."

A Referring Officer should refer an alien to an asylum office according to the set of procedures that has been developed between the asylum office and the INS district office having jurisdiction over the alien's location (e.g., detention site or port of entry).

III.C. ASYLUM OFFICE RECEIVES REFERRAL FROM INS DISTRICT OFFICE

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Most asylum offices' jurisdictions encompass many airports, ports of entry, and detention sites. Therefore, an asylum office may need to coordinate with individuals from more than one (1) INS district office to process an alien through a credible fear determination by an APSO.

1. Log of Referred Cases

The SAPSO must maintain a log of the aliens who were referred to the asylum office by a Referring Officer. This is called a "Log of Referred Cases." At a minimum, the log must contain all of the following:

- A-number of the alien referred
- Full name of the alien referred
- Date the asylum office received the referral from the Referral Officer
- Type of case (e.g., "expedited removal" or "stowaway").

2. INS Forms Pertaining to Credible Fear Referral

In order for an asylum office to have jurisdiction over an alien in the expedited removal process, the alien must have sought admission to the U.S. either through misrepresentation or without documentation, and either expressed a fear of return or was unable to communicate with the Inspector. An asylum office has jurisdiction to hear a credible fear claim from a stowaway who expresses a fear of return or who is unable to communicate with an Inspector.

Form I-860 lists the charges of inadmissibility for an alien in expedited removal, and Form I-867, Parts A&B is the sworn statement taken by an Inspector that contains some indication of an alien's fear of return, or refusal/inability to communicate with an Inspector. The M-444, signed by the alien or with a notation that the alien refused to sign, shows that the alien was apprised of his or her rights under the credible fear process, including the right to a consultant.

The asylum office has jurisdiction to conduct a credible fear interview after receiving and reviewing copies of the following documents:

- Form I-867, Parts A&B
- Form I-860 – only for an alien in expedited removal
- Form M-444, signed and dated by the alien, or with a notation that the alien refused to sign.

Depending upon local policy, the Referring Officer may transmit copies of these documents as part of the referral process, or the asylum office may receive them after being notified of the case by the Referring Officer (e.g., at the time of an orientation).

To ensure that an asylum office does not waste valuable time and resources, the SAPSO must review Form I-860 prior to arranging for a credible fear interview at a remote interview location. This review will verify that the asylum office has jurisdiction to make a credible fear determination.

Once the SAPSO receives the above forms and verifies that the asylum office has jurisdiction to make a credible fear determination, asylum office staff updates as much information on the Preliminary Record (PREC) screen in APSS as possible. **The "CLOCK IN DATE" field on the PREC screen is the date the asylum office receives the referral of the case from the district office. Such a referral is accomplished when the asylum office receives Form I-860 or, in the rare event that the INS district office cannot deliver the Form I-860 to the asylum office due to logistical problems, when other confirmation of jurisdiction is established.** Asylum office staff must update the preliminary information on the PREC screen within three (3) business days of receiving the forms or other confirmation of jurisdiction.

III.D. ASYLUM OFFICE SCHEDULES INTERVIEW

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: 1.b. (2016-03-14); 1.b. (2015-07-24);

1. 48-Hour Hiatus

It is a policy of the Asylum Program to allow a minimum of 48 hours to transpire between the arrival of an alien at a detention site and any credible fear interview. This 48-hour period provides an alien an opportunity to rest, collect his or her thoughts, and contact a relative, representative, attorney, or friend whom the alien may want to act as a consultant during the credible fear interview.

If INS transfers an alien to a new detention site, the 48-hour period begins anew from the alien's arrival at the new detention location.

a. Waiver of 48-Hour Period

Although an asylum office must wait at least 48 hours from the alien's arrival at a detention site before interviewing the alien, an alien may, at his or her request, waive the 48-hour period before a credible fear interview. The asylum office should make every effort to interview the alien as soon as possible after receiving such a request.

If the interview takes place within the 48-hour period, the APSO asks the alien to sign a *Waiver of the 48-Hour Period*. Appendix F: Waiver of the 48-Hour Period

b. Orientation

At the time a referring officer (a U.S. Customs and Border Protection (CBP) Officer or U.S. Immigration and Customs Enforcement (ICE) Officer) places an alien into the credible fear process, he or she provides the alien with a Form M-444, *Information About Credible Fear Interview*. [1] The form, which has been translated into many languages, describes the credible fear interview process and informs the alien of his or her rights.

The Asylum Division cannot proceed with an interview of an alien for credible fear unless a Form M-444, signed and dated by the alien, or with a notation that the alien refused to sign it, is included in the credible fear referral packet. See CFPM section III.C.2., *DHS Forms Pertaining to a Credible Fear Interview*.

Upon receipt of the referral documents from CBP or ICE, Asylum Office personnel should verify that the Form M-444 has been received by the alien. If the alien has not received the Form M-444 and the attached list of legal service providers, or if the M-444 is not signed and dated by the alien or does not have a notation that the alien refused to sign it, Asylum Office personnel should not accept the referral and should coordinate with the referring officer to ensure that the form is executed.

During the credible fear interview, the APSO must verify that the alien has received and understood the Form M-444. This should be done prior to beginning the substantive part of the interview. If the alien indicates that he or she did not understand the form, even if a prior M-444 was already signed and dated, the APSO should conduct the orientation and, after answering any questions, ask the alien to sign and date the Form M-444. If the alien refuses to sign the form, the APSO should note the alien's refusal in the alien's signature space.

Information about whether an alien has received and signed a Form M-444 is required at box 1.9 on the Form I-870. An APSO updates this information at the time he or she completes the Form I-870. If the alien has signed and dated two M-444s the APSO shall note both dates on the Form I-870.

If ICE transfers a detained alien who has already been referred to the Asylum Division to a detention facility that is located in another Asylum Office's jurisdiction, Asylum Office personnel at the new Asylum Office should ensure the alien receives a list of legal service providers for the new location.

This guidance does not apply to aliens who are non-detained. See CFPM section IV.N., *Non-Detained Aliens*, for orientation guidance.

[1] 8 C.F.R. 235.3(b)(4)(i).

Appendix G: Form I-870, Record of Determination/Credible Fear Worksheet

See this Manual, section III.E, APSO Conducts a Credible Fear Interview, for information about contacting an interpreter generally; see also section III.H, Preparing a Determination, for instructions on completing Form I-870.

Form I-870 Updates Required: Boxes 1.5, 1.9

2. Interview Scheduling and Notification Procedures

a. Scheduling an Interview

Each asylum office has developed a system for scheduling credible fear interviews in coordination with the INS district office having jurisdiction over the alien's place of detention. A SAPSO should create an interview calendar that can be used by the APSOs assigned to credible fear

interviews and those INS district office staff members who work in conjunction with the SAPSO.

If a SAPSO knows before scheduling an interview that an alien wishes to have a particular consultant at the interview, the SAPSO contacts the consultant to arrange a date and time for the interview that suits all interested parties (e.g., APSO, INS district office staff members, and consultant). Although an alien is permitted by regulation to have a consultant present at a credible fear interview, the availability of a consultant cannot unreasonably delay the process. A consultant may participate by telephone, if necessary, and if the location of the interview allows for such a system.

A SAPSO should document in the alien's work folder all contact with a consultant, including any conversations about scheduling or rescheduling a credible fear interview.

See this Manual, section III.E, APSO Conducts a Credible Fear Interview, for more information on the role of a consultant.

b. Notifying the Alien of an Interview Date

An asylum office shall provide a written notice of interview to an alien, unless it is impractical to do so due to complex INS district office scheduling and transportation situations. This will allow an alien the opportunity to prepare for the interview and to notify any consultant the alien wishes to be present. An asylum office shall use Form G-56, *Interview Notice*, which includes the SAPSO's name and telephone number. Although not required, the SAPSO should provide a copy of the interview notice to the alien's consultant (if known).

If a written notice of an interview is not given to the applicant, the SAPSO coordinates with the INS district office staff members responsible for the alien's detention, to verbally inform the alien of the interview date and time.

Appendix H: Form G-56, Interview Notice.

3. Interview Space

INS district office staff members must provide appropriate interview space for a credible fear interview, either on a permanent or ad hoc basis. The interview space is appropriate when it includes, at a minimum, the following:

- Provisions for APSO and alien safety
- Provisions for privacy so that the alien can discuss personal or confidential issues
- Installed telephone jack that supports a speaker phone
- Table
- Chairs.

If an APSO has concerns about the safety or privacy of a particular interview space, he or she should notify the SAPSO, who will speak with the INS district office staff members responsible for the space. If they cannot resolve conflicts over appropriate interview space, the asylum office Director may refer the problem to the credible fear program manager at Asylum Headquarters (HQASM). Appendix I: Perryman, Brian R. INS Office of Field Operations. Security and Privacy Provisions for Credible Fear Interviews Under Expedited Removal, Memorandum to Regional

Directors, District Directors, Assistant District Directors for Detention and Deportation and Asylum Office Directors (Washington, DC: 1 July 1997), 2 p.

4. Pre-Interview Preparation by Asylum Officer

Even though credible fear and affirmative asylum interviews differ in many ways, they are both nonadversarial cornerstones of the adjudication/determination processes. In a credible fear interview, as in an affirmative asylum interview, the APSO has an affirmative duty to elicit from the alien all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture. APSOs who conduct credible fear interviews must be thoroughly familiar with affirmative asylum interviews. See the AOBTC Basic Training Materials, Interviewing Part I: Overview of the Nonadversarial Asylum Interview, Interviewing Part III: Eliciting Testimony, Interviewing Part IV: Cross-Cultural Communication, and Interviewing Part V: Physical Abuse, Torture and Trauma-Related Conditions, and Credible Fear. 8 CFR 208.30(d)

III.E. APSO CONDUCTS A CREDIBLE FEAR INTERVIEW

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

1. Mode of Interview: "Live" and Telephonic

An asylum office Director maintains the discretion to have an APSO conduct a credible fear interview in-person with the alien or by telephone. Decisions to conduct telephonic interviews should be made on a case-by-case basis. An asylum office Director should consider, but is not limited to considering, the following issues when deciding whether an APSO should conduct a telephonic interview or an in-person interview:

- The office's resources or finances would be taxed by having an APSO travel to an interview at a remote location.
- An alien would be detained for a period of time that is unreasonable.
- An INS officer (e.g., Detention Officer), not contract personnel, can assist the APSO in conducting the interview telephonically. This requires the INS officer to provide all service documents to the alien, obtain all necessary signatures, and assist with operation of the telephone.
- The INS district office staff members are able to secure a room for the interview, which ensures the confidentiality of the credible fear interview.
- The alien is of an age and maturity level that would not inhibit him or her from being able to communicate a credible fear claim over the telephone.

Although not prohibited, interviewing an unaccompanied minor via telephone is generally not encouraged, particularly if the alien is of a young age (generally less than 14 years old).

The APSO must terminate the telephonic interview and conduct the interview in-person with the alien if there is any indication that the alien does not understand the process, or if the APSO finds that the alien does not have a credible fear of persecution or torture. If an APSO determines that the alien may not have a credible fear, then the SAPSO must schedule a live follow-up interview. APSS Update Required: "INTC," Mode of Interview

2. Family Members Arriving Concurrently with the Applicant

Each applicant for admission to the United States is considered to have made that application for admission independently. Each applicant for admission subject to expedited removal who has been referred for a credible fear interview has the right to have his or her credible fear claim considered independently. The regulations do provide, however, that

[a] spouse or child of an alien may be included in that alien's credible fear evaluation and determination if such spouse or child:

- (1) Arrived in the United States concurrently with the principal alien; and
- (2) Desires to be included in the principal alien's determination.

A "principal/dependent" relationship can ensure that each immediate family member is treated in the same manner. APSOs should remember that it is the choice of the individual alien whether he or she is to be included in a principal alien's application. It is also important that potential asylees be given the opportunity to be heard regardless of which parent is the principal. The procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees.

For all credible fear cases involving more than one immediate family member, an APSO meets with the family to determine whether a spouse or (unmarried) child[ren] under 21 wishes to be included as dependent[s] in the credible fear determination of the spouse or parent. The APSO must not attempt to influence the decision. If a principal/dependent relationship is established, the APSO then interviews the principal.

If the principal is found to have a credible fear of persecution or torture:

- No separate credible fear determination is made for the other immediate family members.
- The Form I-870 is updated with information about dependent family members. The APSO fills out the appropriate information in Section 2.13 through 2.18 on the principal's Form I-870.
- The APSO photocopies the principal's Form I-870 and places the copies in the file(s) of the other immediate family member(s) who are dependents.
- The APSO prepares, serves, and processes each individual's credible fear documentation according to relevant procedures set forth in this Manual for a positive credible fear determination.

If the principal is found not to have a credible fear of persecution or torture:

- The APSO determines if any dependent family member who has articulated a fear of return has a claim separate from that of the principal.
- Special attention should be paid to the privacy of each family member and the possibility that victims of domestic abuse, rape and other forms of persecution might not be comfortable speaking in front of other family members.

If any member of the immediate family is found to have a credible fear (either a spouse or child of the principal), the principal and any other immediate family members who choose may be included in the positive finding and will not need separate credible fear determinations. For those cases where the principal does not have a credible fear but another immediate family member (either his or her spouse, or one of his or her children) does:

- The immediate family member with the positive credible fear becomes the principal applicant, for purposes of the credible fear determination.
- The positive finding is used as the basis for finding credible fear for the entire immediate family that arrived concurrently, including any immediate family member unable to establish credible fear in his or her own interview.
- The APSO photocopies the I-870 and case analysis of the family member found to have a credible fear and places it in the file of the other family member[s].

The APSO prepares, serves, and processes each individual's credible fear documentation according to relevant procedures set forth in this Manual for a positive credible fear determination. For those cases where no family members are found to have a credible fear of persecution or torture, the APSO follows procedures for preparing, serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual. 8 CFR 208.30(b).

Note: "Family," or "immediate family" as used in this section of the Manual, refers to an alien, and any spouse and/or children who arrived concurrently with that alien.

Also see section IV.A, Aliens who Do Not Receive a Credible Fear Determination, for information about minors.

If an APSO questions the bona fides of any relationship, he or she should notify the SAPSO and the SAPSO should notify the credible fear program manager at HQASM.

Form I-870
Updates Required:
Boxes 2.13-2.18

See sections III.H – K, Preparing a Determination, SAPSO Review of the Determination, Serving the Determination on the Alien, and Post-Service Processing.

3. Interpreters

8 CFR 208.30(d)(5) requires the INS to arrange for the assistance of an interpreter in conducting a credible fear interview if the alien is unable to proceed effectively in English. Because APSOs routinely need to secure interpreter services on short notice, at remote locations, and in a variety of languages, the INS uses telephonic interpreter services.

a. Contracting Telephonic Interpreter Services

The Asylum Division currently has a contract with Language Services Associates (LSA). APSOs must use LSA's interpreter services, unless an interpreter cannot be found for a particular interview. If LSA cannot accommodate a request for an interpreter, an APSO may contract interpreter services with either AT&T, Language, Language Learning Enterprises (LLE-LINK), or Berlitz under the following conditions:

- The APSO has received permission from asylum office management to contract a non-LSA interpreter.
- The asylum office has immediate funds to cover the cost of interpreter services.

Any non-LSA interpreter service is billed to the asylum office using whatever method is employed at the asylum office. HQASM will reimburse the asylum office for the interpretation costs. To receive reimbursement, either the SAPSO or the administrative officer should send a cc:mail message to the Office of International Affairs (HQIAO) Budget Division and the credible fear program manager, which outlines the cost of the interpretation service. The HQIAO Budget Division may require proof that services were rendered, so the asylum office should send the cc:mail message at the time it receives the bill. See section IV.F, Interpreters - Documenting Costs.

i. Obtaining an interpreter for an interview

To improve the likelihood of interpreter availability, the APSO should provide the interpreter service with as much notice as possible to locate a qualified interpreter for a future interview.

Each asylum office has an identification code that the APSO must provide when contacting an interpreter service. The SAPSO has a list of all interpreter service providers and the asylum office's identification code. The APSO writes the name of the language that the interpreter and alien will use during the interview in box 1.16 of the Form I-870. If an APSO does not change an interpreter during the interview, the APSO puts a " " in box 1.20 on Form I-870. If an interpreter was changed, see step (d) below for the proper Form I-870 updates.

Form I-870 Updates Required:

Box 1.16 and box 1.20, if interpreter was not changed.

ii. Documenting an interpreter's identification

The APSO puts a " " in box 1.17 on Form I-870 and writes the name of the interpreter service and the interpreter's ID information. The APSO uses the initials LSA, ATT, LLE, or Berlitz to identify the interpreter service. Most interpreters who work for one of the interpreter services have an ID number, which is sufficient for identifying the individual. If the interpreter does not have an ID number, the APSO asks for another means of identifying the interpreter for that interview (last name, for instance).

An APSO may not allow an alien to request the interpreter's name or ask the interpreter questions about the interpreter's ethnicity or political affiliations. If such questions arise, the APSO reminds the alien that he or she can switch interpreters if the interpreter does not appear neutral or competent, and that the APSO will also be alert to such issues. Form I-870 Updates Required:

1.17, and box Yes or No

b. Providing an Interpreter with Forms

The interpreter should have a copy of an APSO Packet, which consists of the following:

- Form M-444, Information about Credible Fear Interview
- Form I-870, Record of Determination/ Credible Fear Work Sheet
- Form I-862, Notice to Appear (NTA)
- Form I-863, Notice of Referral to Immigration Judge
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.

If the interpreter does not have a copy of these documents, the APSO faxes the packet to the interpreter. If faxing is not convenient, the SAPSO informs the language service after the interview that the packet was not distributed to the interpreter. If the interpreter has the forms, the interview is likely to move more quickly and the interpretation to be more accurate; however, having the forms is not a prerequisite for the interpreter to conduct an interview.

The APSO puts a " " in the "yes" or "no" section of box 1.17 on Form I-870 to indicate whether the interpreter possessed the requisite forms at the time of the interview.

c. Interpreter's Role

Interpreters are required to provide competent, neutral translation. In addition, interpreters are required to maintain the confidentiality of matters disclosed during the credible fear interview, including an alien's identity and the nature of the claim. See the AOBTC Basic Training Materials, Interviewing Part VI: Working with an Interpreter. Additional guidance about the role of an interpreter specifically within the credible fear process can be found in the Asylum Division memorandum, Interpreters in the Credible Fear Process (Appendix J). Appendix J: Langlois, Joseph E. INS Asylum Division. Interpreters in the Credible Fear Process, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 10 February 1998), 4 p.

d. Problems with Interpretation and Changing Interpreters

If the alien, the alien's consultant, or the APSO believes that the interpreter is either not competent or not neutral, the APSO can request and use another interpreter. If another interpreter is not immediately available, the APSO reschedules the interview. If, either before or during the interview, the alien requests a male or female interpreter, the APSO should accommodate such a request, when possible.

If an APSO changes an interpreter, he or she puts a " " in box 1.21 on Form I-870, indicating the reason for the change in boxes 1.22– 1.27. The APSO also completes box 1.18 or 1.19 with the new interpreter's information.

If an APSO experiences problems with an interpreter on more than one occasion or more than one (1) APSO experiences problems with the same interpreter, the APSO informs the SAPSO. The SAPSO contacts the credible fear program manager at HQASM about the problems the APSO experienced. For more information on abuse of an interpreter's role, see the Affirmative Asylum Procedures Manual section on interpreters.

Form I-870 Updates Required:
Box 1.21 (and boxes 1.22 – 1.27, whichever apply) and box 1.18

e. Aliens Who Provide Their Own Interpreters

If the alien requests to use a relative, friend, or other source as an interpreter, the APSO proceeds with the interview using the alien's interpreter. Because the regulations at § 208.30(d)(5) require an APSO to arrange for assistance of an interpreter, an APSO must obtain the services of a telephonic interpreter for the interview, who will listen to the interview and ensure the interpreter provided by the alien is interpreting correctly.

The APSO puts a " " in box 1.17 on the I-870 and writes the name and ID of the telephonic interpreter. The APSO also puts a " " in box 1.18 and writes the name of the alien's interpreter, indicating that the individual interpreted at the request of the alien.

The APSO explains to all parties, including the telephonic interpreter, that the INS must verify that the alien's interpreter is accurate and neutral while interpreting. The APSO explains that the telephonic interpreter is to interject if he or she believes that the alien's interpreter is not accurate or is not neutral. If the telephonic interpreter notes that the alien's interpreter is not neutral or does not translate the alien's or the APSO's statements and questions accurately, the APSO informs the alien that the telephonic interpreter will be used exclusively for the remainder of the interview. The APSO must reflect the change in interpreters in box 1.21 of the Form I-870, indicating the reason for the change in boxes 1.22 – 1.27.

Form I-870 Updates Required:
Boxes 1.17, 1.18, and 1.21– 1.27, if applicable.

If the change of interpreter was due to the alien's interpreter misrepresenting an alien's statements, incompetence, or the use of abusive or intimidating language with the alien, the APSO informs the SAPSO. Depending upon the circumstances in the case, the asylum office Director or his or her designee may seek to bar the individual from interpreting in the future. Check with local asylum office management for any procedures for barring interpreters in the credible fear process.

f. Monitoring of Interpreters' Performance

The interpreter services may have supervisors monitoring some of their calls as a quality assurance measure. If the APISO, alien, or alien's consultant expresses any reason for not wanting the interview monitored, the APISO informs the interpreter service that the call may not be monitored. If the interpreter service does not appear to be complying, the APISO notifies the SAPSO, who contacts the asylum office's liaison at the interpreter service. The SAPSO also contacts the credible fear program manager at HQASM.

4. Consultants

8 CFR 208.30(d)(4) permits an alien to consult with any person or persons of his or her choosing prior to the interview, and for a consultant to be present at the credible fear interview. A consultant may be a relative, friend, clergy person, attorney, or representative. If the consultant is an attorney or representative, he or she is not required to submit a Form G-28, Notice of Entry or Appearance as Attorney or Representative, but may submit one if he or she desires.

Because a consultant does not "represent" an alien, even if an attorney has been disbarred by a state, possession, territory, or Commonwealth of the District of Columbia, he or she may act as a consultant. The individual may act as a consultant even if the Attorney General has taken disciplinary action against, suspended, or barred the attorney from practice before the EOIR or INS.

The APISO puts a " " in box 1.10 on Form I-860, indicating whether the alien has a consultant. If the alien has a consultant, the APISO completes box 1.11 on Form I-870. If the alien's consultant is an attorney or an accredited representative, asylum office personnel update APSS using the Add Attorney/Representative to Interview (REPR) command to retrieve or create an attorney ID number. For all cases in which the alien has a consultant, asylum office personnel update the "INTC" screen, Consultant field by typing in a "Y." A consultant may also be a fellow detainee in the same facility as the alien being interviewed by an APISO. As long as the logistics of having a fellow detainee present at the credible fear interview do not unduly delay the process, INS must permit a fellow detainee to act as a consultant during an interview.

Form I-870 Updates Required:
Boxes 1.10 and 1.11, if applicable.

APSS Updates Required:
"INTC," CONSULTANT (Y/N) field;
"REPR"

a. Consultant's Role

The role of a consultant is similar to the role of an attorney or representative in an affirmative asylum interview. An APISO must explain the consultant's role to the consultant and the alien at the beginning of the interview. A consultant may make a statement, comment on the evidence, or ask the alien additional relevant questions that the APISO did not ask, at the end of the interview. To avoid misunderstandings, it sometimes will be appropriate for a consultant to make comments during, instead of at the end, of the interview. Only in unusual circumstances, such as mental disability, will a consultant be permitted to answer for the alien.

A consultant who repeatedly interrupts or otherwise disrupts an interview must be asked to refrain from doing so and reminded that he or she has an opportunity at the end of the interview to make comments. An APISO may ask a consultant who continuously fails to abide by the rules of the interview to leave the interview. Should this occur, the APISO continues with the interview. The APISO must clearly outline in the interview notes what occurred during the interview that prompted the consultant's dismissal from the interview.

If the consultant appears for the interview, the APISO puts a " " in box 1.13 on Form I-870, indicating that a consultant was present.

Appendix K: Langlois, Joseph E. INS Asylum Division. Role of Consultants in the Credible Fear Interview, Memorandum to Asylum Directors, Supervisory Asylum Officers and Asylum Officers (Washington, DC: 14 November 1997), 2 p.

Form I-870 Updates Required:
Box 1.13

b. Failure of Consultant to Attend Interview

If the SAPSO made previous arrangements with a consultant to appear at the interview, and the consultant does not appear, the APSO may continue with the credible fear interview, with the alien's consent. The APSO records the alien's consent to proceed with the interview in the interview notes, and puts a " " in box 1.15 on Form I-870, indicating that no one other than the alien and the APSO were present at the interview.

All requests by an alien to not proceed with an interview without a consultant must be handled on a case-by-case basis. The SAPSO should make every effort to ensure that a consultant is present at an interview, if an alien desires such a person's presence and it does not unreasonably delay the process. Before deciding whether to reschedule or proceed with the interview, the APSO must ascertain whether the alien has a specific person in mind for a consultant (if so, the APSO obtains his or her name and telephone number), and whether the alien has contacted and spoken to this person.

Rescheduling requests are considered by the SAPSO pursuant to policies developed at the local asylum office. Every effort should be made for the alien to have a consultant present, as long as such consultation does not unreasonably delay the process. A SAPSO may deny a request to reschedule an interview if the asylum office has documented chronic problems with a particular consultant who consistently submits rescheduling requests or fails to attend credible fear interviews.

Form I-870 Updates Required:
Box 1.15

5. Witnesses

8 CFR 208.30 does not specifically allow an alien to present "witnesses," as stated in §208.9(b), which governs affirmative asylum interviews. Section 208.30(d)(4) does state, however, that any person or persons with whom the alien wishes to consult may be present at the interview and may be permitted, at the discretion of the APSO, to present a statement. A consultant, therefore, may also act as a witness on the alien's behalf.

An APSO should not refuse a witness the opportunity to testify; however, an APSO may place a reasonable limit on the length and subject matter of a witness's statement(s), and may request a witness's statement in writing, as long as the submission of the statement does not delay the determination.

The APSO puts a " " in box 1.14 on Form I-860, by placing the witness's name on the "Other(s)" line and indicating that he or she is acting as a witness. See Memos, Interpreters in the Credible Fear Process (Appendix J) and Role of Consultants in the Credible Fear Interview (Appendix K) for further information on witnesses.

Form I-870 Update Required:
Box 1.14

6. Administering an Oath

Before beginning an interview, the APSO places the alien, interpreter, if any, and any witness under oath. An alien does not need to sign a written applicant's oath, and an interpreter does not need to sign a written interpreter's oath. The following, which will be interpreted for the alien, shall constitute the interpreter's oath:

Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not you add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpret in a neutral manner on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion?

7. Form I-870, Record of Determination/Credible Fear Worksheet

The Form I-870 is a guide for conducting an interview, and it contains five (5) sections:

Section I: Interview Preparation

Section II: Biographic Information

Section III: Credible Fear Interview

Section IV: Credible Fear Findings and

Section V: Asylum Officer/Supervisor Names and Signatures.

In addition, an Additional Information/Continuation Sheet is attached to the form.

Each check-off box, or line, is numbered throughout the form. An APSO must update any numbered item on the form

that applies to the alien's case. The following describes how an APSO updates each numbered item:

a. Section I: Interview Preparation

- Boxes 1.1 through 1.8 – Self-explanatory
- Box 1.9 – Before beginning an interview, an APSO ensures that the alien has received and signed a Form M-444. In addition, an APSO must determine that the alien has an understanding of the credible fear process. See this Manual's section III.D on orientation if the alien's file does not contain a Form M-444.
- Boxes 1.10 through 1.12 – See this Manual's sections on consultants and witnesses (III.E.4 – III.E.5).
- Boxes 1.16 through 1.27 – See this Manual's section III.E on interpreters.
- Box 1.28 – The APSO must read the paragraph to the alien at the beginning of the interview and place a " " in the box to document that the paragraph was read.

b. Section II: Biographic Information

- Boxes 2.1 through 2.16 – Self-explanatory
- Boxes 2.17 through 2.18 – These questions concern the applicant's children, if any. If the applicant has any U.S. citizen children, the APSO must write each child's address in the space marked "Present location."
- See the Family Members Arriving Concurrently with the Applicant section of this Manual (III.E.2) for information on processing the credible fear claims of such family members.
- For any dates of birth – If the alien does not know the exact month or day of his or her own, or a spouse's or child's date of birth or a date of marriage, but knows the year of birth or marriage, the APSO writes, "1/1/[year]."
- Boxes 2.19 through 2.21 – The APSO reviews these questions with the alien, indicating whether any medical conditions exist. An APSO should follow local procedures on notifying INS or Public Health Service (PHS) if an alien claims to have a particular medical condition, or if the APSO observes that a medical condition, either physical or mental, may exist.
- Boxes 2.22 and 2.23 – The APSO must ask the alien whether he or she has any ties to the community or a sponsor. A district Director may use the answers to these questions when determining whether to parole the alien.

c. Section III: Credible Fear Interview

- Box 3.1, a, b, and c – See this Manual's section III.H.1, Completing the Form I-870 for details about completing this item.
- Box 3.2 – The APSO reads the paragraph to the alien at the conclusion of the interview.
- If the alien does not ask any questions, indicate this on the lines provided.
- If the alien does ask questions, record them in the interview notes.
- Interview Notes – See Section III.E.8, Note-Taking by the APSO During a Credible Fear Interview, in this Manual.
- Negative Credible Fear Finding – The APSO is only required to provide a typed summary and analysis of a claim (assessment) if he or she makes a negative credible fear determination.

d. Section IV: Credible Fear Findings

This part of the form is divided into three (3) sections: (A) Credible Fear Determination, which includes credibility, nexus, and the credible fear finding; (B) Possible Bars, and (C) Identity. See this Manual's section III.H, Preparing a Determination, for more information on how to update this part of the form.

e. Section V: Asylum Officer/Supervisor Names and Signatures

- Boxes 5.1 through 5.3 – The APSO completes these boxes upon completion of the Form I-870. The date in box 5.3 is the date the APSO completes the case and submits it to the SAPSO for review.
- Boxes 5.4 through 5.6 – The SAPSO completes these boxes upon review and concurrence with the credible fear determination.

f. Additional Information/Continuation Sheet

An APSO may use this sheet if additional space is needed to record information provided by an alien.

8. Note-Taking by the APSO During a Credible Fear Interview

Most interviews will require standard note-taking as outlined in the AOBTC Basic Training Materials, Interviewing Part II: Note-Taking. An APSO may either handwrite notes or type them on a computer. Notes may be taken on the I-870 itself, on the Additional Information/Continuation Sheet. There is no standard format for note taking during a credible fear interview, unless it appears to the APSO during the interview that the alien does not have a credible fear of persecution or torture. Regardless of whether the APSO is writing the notes by hand or typing them on a computer, the APSO begins taking notes in the Q&A format when it appears to the APSO that the alien may not have a credible fear of persecution or torture.

See this Manual, section III.H, Preparing a Determination, on preparing notes after an interview.

Because the Q&A notes may form the basis of a negative credible fear determination, the APSO must ensure that they contain all information relevant to the claim. For example, if an APSO previously asked questions that were not captured on the Q&A statement and these questions are relevant to whether the alien may not have a credible fear, the APSO must ask the alien these questions again to record them on the Q&A statement. The Q&A must contain the alien's A-number, the date of the interview, and the APSO's name.

9. Conducting an Interview in a Language other than English

Each asylum office has a local policy on whether an APSO may conduct a credible fear interview in a language other than English. If the local policy allows an APSO to conduct interviews in a language other than English, either the INS or Department of State (DOS) must certify that the APSO is proficient in that language. Language certification may be obtained through the Immigration Officer Academy (Glynco) in Brunswick, GA.

The APSO must make a clear notation in the interview notes that the interview was conducted in a language other than English and indicate the language used by the APSO. In addition, the APSO updates box 1.16 on Form I-870, indicating the language used by the alien and that the interview was conducted in that language.

If there is any concern that the alien is having difficulty understanding the APSO, or might later claim that the APSO did not interpret correctly, the APSO should use an interpreter and put a " " in box 1.17 on Form I-870.

Form I-870 Updates Required:
Box 1.16 and box 1.17, if applicable.

10. Aliens Unable to Testify on their own Behalf

An alien may be incapable of testifying on his/her own behalf due to mental incompetence or a physical disability. These include individuals who suffer from acute mental disorders, or have suffered an injury, such as a stroke, that makes them unable to communicate.

If an APSO believes that a particular alien is not sufficiently competent to be interviewed, he or she must contact the SAPSO. The APSO must also complete boxes 2.19 through 2.21 in Section II of Form I-870, which concerns aliens who have medical conditions. The SAPSO, local INS personnel, and PHS personnel should make every effort to see if the alien can testify on his or her behalf. If, however, the alien is not capable of proceeding with an interview, the SAPSO takes the following action:

- Completes only those portions of the Form I-870 that provide a record of information the APSO is able to retrieve from databases or documents included in the alien's A-file. The APSO should not complete any portion of Section IV, Credible Fear Findings, Form I-870, because the APSO is unable to adjudicate the claim of an alien incapable of proceeding with an interview.
- Forwards the I-870, I-867 A&B, I-860, interview notes, and documentation pertaining to the alien's mental well-being to the HQASM credible fear program manager by facsimile for review, and awaits concurrence. Form I-870 Updates Required:

Boxes 2.19 through 2.21

Appendix L:

Langlois, Joseph E.,

INS Asylum Division.

Mentally Incompetent Aliens in the Credible Fear Process, Memorandum to Asylum Office Directors, Deputy Directors, Supervisory Asylum Officers, QA/Trainers and Asylum Officers (Washington, DC 20 September 2001), 2 p.

- Prepares a Form I-862, Notice to Appear (NTA), upon concurrence by HQASM. In addition to the charge of inadmissibility that appears on the I-860, asylum staff also alleges that the alien is a "Public Charge," and charges the alien with violating section 212(a)(4) of the INA.
- Serves the NTA on the alien according to Serving the Determination on the Alien procedures set forth in section III.J of this Manual and files it with the Immigration Court according to procedures in section III.K, concerning Post-Service Processing.

Charging the alien with violating section 212(a)(4) enables him or her to receive a full removal hearing before an immigration judge, pursuant to section 240 of the INA.

11. Aliens Unwilling to Testify on their own Behalf

An alien may be unwilling to testify on his or her own behalf due to a mental disorder or due to an intentional resistance to INS requirements in the expedited removal process. If the alien appears to understand the APSO's questions, has communicated coherently with the APSO in prior instances, but refuses to answer questions that would permit the APSO to make a positive finding of credible fear, the APSO should find negative credible fear for the alien. Each question the APSO asks must be explicitly recorded in the notes. Because the alien is unresponsive, the APSO should write, "Alien refused to answer" following each question. Owing to the alien's failure to provide any evidence supporting a positive finding, the case is completed as a negative credible fear determination.

12. Re-interviewing Aliens prior to Departure ("Runway Cases")

An immigration judge may uphold an APSO's determination that an alien does NOT have a credible fear of persecution or torture. There is no review of an immigration judge's decision; however, circumstances may arise when the Director of International Affairs, or his or her designee, exercises discretion to offer a second interview to an alien. Circumstances include, but are not limited to, the following:

- Alien claims that compelling new information exists and should be considered.
- Changed country conditions materially affect the alien's eligibility to meet the credible fear standard.
- Changes in the applicant's circumstances materially affect the alien's eligibility to meet the credible fear standard (e.g., alien's embassy made threatening statements to the alien during the process of obtaining a travel document for the alien's return home).

Any decision to re-interview an alien after an immigration judge's decision to uphold a negative credible fear determination must be communicated from the Director of International Affairs, or his or her designee, to Headquarters Field Operations. The SAPSO then must provide notice of the reconsideration to the immigration judge, pursuant to 8 CFR § 1208.30(g)(2)(iv)(A), before the APSO commences the re-interview.

13. Tape Recording an Interview

Tape recording a credible fear interview by an alien or consultant is prohibited. If a consultant or an alien requests to tape-record an interview, the APSO informs the individual that HQASM policy prohibits such practice. An APSO also cannot tape record an interview without the express permission of the credible fear program manager at HQASM.

III.F. APSO CONCLUDES A CREDIBLE FEAR INTERVIEW

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

At the conclusion of the interview, the APSO reads to the alien the paragraph at box 3.2 on Form I-870. If the alien does not have any questions, the APSO notes this in the lines provided after the paragraph. The APSO then must review a summary of material facts from the alien's testimony with the alien and provide him or her an opportunity to correct any mistakes. See 8 CFR §208.30 (d)(6). Form I-870 Updates Required:
Box 3.2

1. Q&A Notes (if any)

At the conclusion of the interview, the APSO reads back any Q&A notes to the alien and makes any corrections requested by the alien. See this Manual's section III.H.1, Completing the Form I-870, for information about typing notes in Q&A format if they were handwritten during the interview.

2. Informing the Alien About the Next Step in the Process

The APSO does not inform the alien of the decision during the course of the interview, or give any hint, suggestion, or any other indication of what the determination will be at the interview's conclusion. The APSO must, however, tell the alien how and when (if possible) he or she will be informed of the determination.

An asylum office Director maintains the discretion to have a credible fear determination served either in-person with the APSO or via telephone. The asylum office Director should consider the same factors outlined in section III.E.I about mode of interview. If a credible fear interview was conducted telephonically, then in most cases, the service of the determination will also be performed the same way, under the same set of conditions.

3. Dismissing the Alien

An APSO must follow local INS policy for alerting an INS officer when the interview is finished. Unless permitted by local INS policy, an APSO should not leave an alien unattended in an interview room.

4. Updating APSS

Once an interview is complete, an APSO completes the PREC screen. In addition, the APSO creates an interview record using the Interview Record (INTC) command. Asylum office staff must finish updating the PREC screen and update the INTC screen within seven (7) business days of the interview. APSS Updates Required:
"PREC" and "INTC"

III.G. RESEARCHING A CASE

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Country conditions research may be necessary to reach a credible fear determination. See the AOBTC Basic Training Materials, Country Conditions Research and the RIC, Credible Fear, Section VII, Parts A and B, and the Affirmative Asylum Procedures Manual for guidance on country conditions research.

III.H. PREPARING A DETERMINATION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Once the APSO completes a credible fear interview, he or she prepares a determination. There are two (2) possible determinations: positive credible fear and negative credible fear. Although asylum office staff prepares different sets of documents for the two types of determinations, a completed Form I-870 constitutes the basis of each determination.

1. Completing the Form I-870

Section III: Credible Fear Interview and Section IV: Credible Fear Findings on Form I-870 are the sections where an APSO places information about the credible fear claim provided by the alien during the interview. In addition to completing all numbered items in Sections I and II and signing the completed form, the APSO must fully complete Sections III and IV and ensure the information provided in one section is consistent with information in the other section. An APSO must complete Sections III and IV in the following manner, depending upon the type of determination that is made:

a. Positive Credible Fear Determination

i. Section III: Credible Fear Interview

Because a positive credible fear determination is not reviewed by an immigration judge, an APSO can choose whether to handwrite or type answers to question 3.1, parts a, b, and c. An APSO is encouraged to type the answers, but if handwritten, they must be legible.

The APSO provides a brief summary of the alien's testimony below each lettered question in item 3.1. If sufficient space is not available, the APSO may attach another sheet of paper with the respective section and question number noted. The information written in the spaces should be a brief synopsis of information contained in the notes. The notes should be sufficiently legible so that the SAPSO can consult them for clarification or more detailed information if he or she has any questions about the information provided on the form. See the Manual's section III.E.8, Note-Taking by the APSO During a Credible Fear Interview, for details on note taking.

ii. Section IV: Credible Fear Findings

For a positive credible fear finding, an APSO must update boxes:

4.1 for a positive credibility determination. 4.6 through 4.12, depending upon the ground. If the claim is based solely on the applicant's opposition to coercive family planning (CFP) measures, only update box 4.11. 4.13 OR 4.14 If the alien has a credible fear of persecution (box 4.13) do not update box 4.14, even if the alien may also have a credible fear of torture. 4.16 OR 4.24 If 4.16 is updated, also update 4.17 through 4.23, depending upon the bar(s) that may apply. Explain which bar(s) may apply on the continuation sheet of Form I-870. 4.25 OR 4.29 If 4.25 is updated, also update 4.26 through 4.28, depending upon which one(s) may apply. If 4.29 is checked, explain on the continuation sheet of Form I-870 why identity was not determined with a reasonable degree of certainty. If a credible fear of persecution is found, an APSO does not need to probe into a credible fear of torture. See AOBTC Basic Training Materials, Credible Fear, for more information.

b. Negative Credible Fear Determination

i. Section III: Credible Fear Interview

Because an immigration judge may review a negative credible fear determination, the APSO must complete Section III of the form in the following manner:

Instead of responding to each lettered question in box 3.1, the APSO must prepare an assessment, which is a summary and analysis of the alien's testimony, and attach it to the form. In the spaces for each lettered question at 3.1, the APSO writes, "See attached assessment."

- The APSO must attach typed Q&A notes in support of the negative credible fear determination. Therefore, if the interview notes were not typed during the interview, the APSO must type them at this time and attach the handwritten Q&A notes to the typed version of the same notes.

ii. Section IV: Credible Fear Findings

For a negative credible fear finding, an APSO must update boxes:

- 4.1 OR 4.2
- If 4.2 is checked, also check 4.3 through 4.5, depending upon the reason for the negative credibility finding.
- 4.12, only if the reason for a negative credible fear is lack of nexus to a protected ground. If the negative credible fear of persecution is based upon a lack of credibility, do not update the nexus section.
- 4.15 for the negative credible fear determination
- 4.16 OR 4.24
- If 4.16 is updated, also update 4.17 through 4.23, depending upon the bar(s) that may apply.
- Explain which bar(s) may apply on the continuation sheet of Form I-870.
- 4.25 OR 4.29
- If 4.25 is updated, also update 4.26 through 4.28, depending upon which one(s) may apply.
- If 4.29 is checked, explain on the continuation sheet of Form I-870 why identity was not determined with a reasonable degree of certainty.

2. Generating Documents and Updating APSS

Below is an outline of the documents and computer updates associated with each type of determination for an alien in expedited removal. Refer to the Manual's section IV.K, Expanded Topics: Stowaways, for guidance about document preparation for stowaways. Asylum office staff must update the ADEC screen within seven (7) business days of the determination date.

a. Positive Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet
- Form I-862, Notice to Appear (NTA)
- ADEC screen updated with "Y" for "PERSECUTION ESTABLISHED" and "REAS/CRED FEAR EST."
- If the positive credible fear determination is based upon torture only (negative credible fear of persecution, but positive credible fear of torture), update the ADEC screen with a "Y" for "TORTURE CONVENTION." Update the "REAS/CRED FEAR EST" field with a "Y" as well. Appendix M: Form I-862, Notice to Appear (NTA).

Check with the local immigration court for instructions on how to complete the section for the hearing date and time on the NTA.

b. Negative Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet.
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge (A-number and section 1 only). The boxes in section 1 must match the reasons for the negative determination on Form I-870.
- Form I-860, Notice and Order of Expedited Removal. The APSO prints his or her name and title and signs where indicated.
- Form I-863, Notice of Referral to Immigration Judge. The APSO completes the top portion of the form and puts a " " in box 1 in the event the alien requests immigration judge review. The APSO also puts a " " in the boxes under the "Notice to Applicant" section, and in the boxes pertaining to the documents that will be presented to the immigration judge.
- ADEC screen updated with "N" for "PERSECUTION ESTABLISHED," REAS/CRED FEAR EST," AND "TORTURE CONVENTION." Appendix N: Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.

Appendix O: Form I-863, Notice of Referral to Immigration Judge.

"Manner of Arrival" on Form I-863 is how the alien arrived to the U.S. (e.g., air, boat, car, or on foot).

Check with the local immigration court for instructions on how to complete the section for the hearing date and time on the Form I-863.

III.I. SAPSO REVIEWS DETERMINATION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

1. Case Review Checklist

The SAPSO reviews each case for procedural and substantive correctness and completeness, which includes the following:

- The APSO updated all numbered boxes and lines pertaining to the alien's case on Form I-870.
- For a positive determination, box 3.1 of Section III: Credible Fear Interview on Form I-870 contains sufficient information to support the decision.
- For a negative determination, an assessment is attached along with typed Q&A notes and any handwritten Q&A notes, and the assessment supports the decision.
- The APSO signed Form I-870.
- Interview notes are legible and sufficient to support the determination.
- Identifying information (e.g., name, A-number) is consistent in all determination documents.
- NTA allegations/charges and the location of the Immigration Court are correct (if applicable).
- The APSO put a " " in the appropriate boxes on Form I-863, and the location of the Immigration Court is correct (if applicable).
- The APSO correctly updated the boxes in section 1 on Form I-869 to match the reason for the negative finding on the Form I-870 (if applicable).
- The APSO completed the bottom portion of Form I-860 (if applicable).
- APSS is properly updated.

Normally, an Immigration Court will only accept an NTA or Form I-863 with a SAPSO's original signature. Therefore, depending upon arrangements that have been made with a court administrator and local asylum office policy, a SAPSO either signs one (1) NTA that is photocopied, or signs multiple NTAs.

2. Signature on Documents

A SAPSO's signature on a document means that he or she reviewed the case in accordance with the instructions in the previous section and concurs in the determination made by the APSO. After reviewing the determination, the SAPSO takes the following action:

- Signs the Form I-870
- Signs or initials the assessment, if any
- Signs and dates the NTA, if any
- Signs the Form I-863, if any.

3. Standard of Review

It is not the role of the SAPSO to ensure that the APSO decided the case as she or he would have decided it. APSOs must be given substantial deference, once it has been established that the analysis is legally sufficient.

In the event that the SAPSO disagrees with the APSO's decision, he or she discusses the case with the APSO. If the SAPSO and APSO are not able to resolve their differences, the SAPSO elevates the issue to the Director (or Deputy Director). The Director may decide, in his or her discretion, to refer the case to Headquarters Quality Assurance Branch (HQASM/QA) for further review, keeping in mind that negative credible fear determinations are always mandatory HQASM/QA reviews.

See section IV.I on Quality Assurance Review for a list of cases subject to mandatory HQASM/QA review.

III.J. Serving the Determination on the Alien

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

1. Preparing the Documents for Service

Once the SAPSO and HQASM/QA, if applicable, have reviewed the case, asylum office staff prepares the documents for service on the alien. This includes making the necessary photocopies and packaging together the documents that the APSO will serve on the alien. The asylum office must maintain copies of all documents served on the alien, as outlined in the Manual's section IV.E, File Management.

2. Serving the Determination on the Alien

An APSO usually serves a determination in-person, unless it is determined that service can be accomplished telephonically with the assistance of an INS Officer. Normally, an APSO will serve a determination telephonically if the interview also was conducted telephonically.

If the alien has a consultant, the asylum office prepares one (1) additional copy of the documents for the consultant. The alien receives the consultant's copy of the documents at the time of decision and is responsible for forwarding the documents to the consultant. The asylum office does not provide copies of the documents to the consultant directly, in order to protect the confidentiality of the alien as required by 8 CFR 208.6.

Depending upon the determination, the alien receives one (1) of the following sets of documents, and a copy of such documents if a consultant was present at the credible fear interview.

a. Positive Credible Fear Determination

- Form I-870, Record of Determination – copy.
- Form I-862, Notice to Appear - - copy of original that was signed by SAPSO or one (1) of several NTAs the SAPSO signed.
- List of Free Legal Services Providers.
- EOIR -33 Change of Address Form. In the event the District Director paroled the alien from detention, the alien must be aware of his or her obligation to notify the court of any changes in address.
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the alien was not previously given a copy of the form).
- Form I-860, Notice and Order of Expedited Removal – copy (only if an alien was not previously given a copy of the form).

When serving the decision, the APSO:

- Explains to the alien that INS found him or her to have a credible fear of persecution or torture, and he or she will be placed into proceedings before the Immigration Court to apply for asylum or withholding of removal.
- Asks the alien to sign the NTA on the certificate of service section.
- Fully and correctly completes the certificate of service section on the NTA, indicating that the document was personally served.
- Explains to the alien that, if INS releases him or her from detention, the alien must notify the INS and the Immigration Court of any change in address by completing and mailing the EOIR-33 Change of Address Form to EOIR and notify the INS in writing or on a Form AR-11.

b. Negative Credible Fear Determination

- Form I-870, Record of Determination –copy.
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge – original. If the alien requests immigration judge review, or refuses to either request or decline such review, also serve:
- Form I-863, Notice of Referral to Immigration Judge- - copy of original that was signed by SAPSO or one (1) of several forms that the SAPSO signed.
- List of Free Legal Services Providers.
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the alien was not previously given a copy of the form).
- Form I-860, Notice and Order of Expedited Removal – copy (only if the alien was not previously given a copy of the form).

When serving the decision, the APSO:

- Explains to the alien that INS did not find him or her to have a credible fear of persecution or torture.
- Explains to the alien that he or she may request review of the decision by an immigration judge.

If the alien requests review of the decision, or refuses to request or decline such review, the APSO:

- Puts a " " in the "yes" box at question 2 on Form I-869 and completes the bottom portion of the form.
- Asks the alien to sign the Form I-869.
- Puts a " " in box 1 on Form I-863 (if this update was not already made).
- Fully and correctly completes the certificate of service section on Form I-869.

If the alien affirmatively declines immigration judge review, the APSO:

- Puts a " " in "no" box at question 2 of Form I-869 and completes the bottom portion of the form.
- Completes the bottom portion of Form I-860.

III.K. POST-SERVICE PROCESSING

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

1. Positive Credible Fear Determination

The asylum office must place the alien into removal proceedings by filing the NTA with the Immigration Court having jurisdiction over the alien's place of detention. The NTA is the only document filed with the Immigration Court; however, if a particular Immigration Court requires other documents along with the NTA, the SAPSO should provide these documents. Local arrangements made with a court administrator will determine how the asylum office files the NTA, and any other requested documents, with the court. No NTAs, however, are to be forwarded to the Districts to accomplish filing with the court, except in rare circumstances necessitating District service, to be determined on a case-by-case basis. In those rare cases, the asylum office must track the A-number in ANSIR to ensure the case was filed with the Immigration Court. See the Manual's section IV.K, Stowaways, for requirements in these cases.

Appendix Q: Langlois, Joseph E., INS Asylum Division. Filing Notices to Appear (NTAs) with the Executive Office for Immigration Review (EOIR) after Credible Fear Interviews, Memorandum to Asylum Office Directors, Deputy Directors, and Supervisory Asylum Officers (Washington, DC: 26 March 2002), 3 p.

2. Negative Credible Fear Determination

a. Alien Requests Review of the Determination, or Refuses to Request or Decline Such Review

The asylum office files the following documents on the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge – original
- Form I-870, Record of Determination – copy
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge – original
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy
- Form I-860, Notice and Order of Expedited Removal – original
- Typed Q&A notes – copy See the Manual's section IV.K , Stowaways, for requirements in these cases.

Section 235(b)(1)(B)(iii)(III) of the INA requires an immigration judge to review a negative determination no later than 7 days after the date of determination. Because of the expedited nature of review, a court administrator of an Immigration Court may accept documents for service by facsimile, rather than in-person or via mail. Each asylum office must coordinate with the court administrator to determine the local court's requirements.

If the immigration judge vacates the APSO's negative determination, the Service must place the alien into removal proceedings under section 240 of the INA. Either a Trial Attorney or Detention Officer is responsible for preparing and serving a NTA on the alien and filing the NTA with the Immigration Court after an immigration judge vacates a negative credible fear finding. Appendix R:

Creppy, Michael J. Office of the Chief Immigration Judge. Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews, Memorandum to Assistant Chief Immigration Judges, Immigration Judges, Court Administrators and Support Staff (Washington, DC: 25 March 1997), 9 p.

b. Alien Affirmatively Declines Review of the Determination

If the alien declines immigration judge review of his or her determination, the APSO refers the alien to a Detention Officer along with the completed Form I-860. The INS district office having jurisdiction over the alien's place of detention is responsible for removing the alien from the United States.

IV.A. ALIENS WHO DO NOT RECEIVE A CREDIBLE FEAR DETERMINATION

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

1. Crewmembers

Crewmembers who arrive on board a vessel and express a fear of persecution or harm are not entitled to a credible fear determination. A crewmember who wishes to seek asylum must complete a Form I-589 Application for Asylum and Withholding of Removal and submit it to the District Director having jurisdiction over the port where the alien arrived. The District Director files a Form I-863 and the Form I-589 with the Immigration Court. An immigration judge will determine the alien's asylum claim. 8 CFR 208.5(b)

2. Cubans (Certain)

A Cuban native or citizen who arrives at a port-of-entry by aircraft is not subject to expedited removal, even if he or she seeks admission to the United States by misrepresentation, without documentation, or with documentation proving citizenship in another country. The INS places the Cuban national into INA section 240 removal proceedings. 8 CFR 235.3(b)(1)(i)

3. Minors

An alien under the age of 18 is considered a minor. If the minor is accompanied by a relative or guardian, INS places the minor into the same type of proceeding as the adult (e.g., expedited removal or INA section 240 proceedings), or permits the minor to withdraw his or her application for admission.

See this Manual's section IV.K, Stowaways, for information about processing stowaways who are also minors.

As a matter of policy, INS does not place unaccompanied minors into expedited removal proceedings except under the following conditions:

- the minor has engaged in criminal activity, in the presence of an INS officer, that qualifies as an aggravated felony if committed by an adult;
- the minor has been convicted or adjudicated delinquent of an aggravated felony in the U.S. or in another country and the inspecting officer has confirmation of that order; or
- the minor has previously been formally removed, excluded, or deported from the U.S.

Appendix S:

INS charges an unaccompanied minor, who does not fall into a category listed above, with violating sections 212(a)(7) and 212(a)(4) of the INA. As a general rule, unaccompanied minors are not charged with violating section 212(a)(6)(C) of the INA unless the minor clearly understands that he or she is committing fraud. By placing section 212(a)(4) [likely to become a public charge] on the charging document, INS may place the minor into section 240 removal proceedings.

Inspectors also may allow a minor to withdraw an application for admission.

If an Inspector refers a confirmed unaccompanied minor for a credible fear interview, and the minor does not fall within one of the exceptions listed above, the asylum office should refer the minor back to Inspections for modification of the charges. Inspections must add "§ 212(a)(4)" to the list of charges to place the minor in section 240 proceedings. Virtue, Paul. INS Office of Programs. Unaccompanied Minors Subject to Expedited Removal, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director, PDI, ODTF Glyncro, and ODTF Artesia (Washington, DC: 21 August 1997), 4 p.

During an orientation or interview, an APSO may reasonably believe that an alien claiming to be an adult is a minor. In such cases, the APSO immediately contacts a SAPSO and suspends processing the case. The SAPSO refers the name of the alien to the INS district office staff member responsible for the alien's care.

INS should confirm the alien's age by dental and/or wrist bone examination, which is a process usually coordinated by PHS. If PHS determines the alien is not a minor, the asylum office continues to process the credible fear claim.

IV.B. CONFIDENTIALITY ISSUES

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

The confidentiality provisions outlined in 8 CFR 208.6 protect information pertaining to a credible fear interview and determination, as well as an asylum interview and determination. For more information on confidentiality protections, see the Confidentiality Issues section of the Affirmative Asylum Procedures Manual.

IV.C. DETENTION AND PAROLE OF ALIENS

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

APSOs do not make parole determinations, nor do they make recommendations on parole. An APSO may, however, gather information during a credible fear interview that a District Director may consider in making a parole determination (e.g., medical condition). The information in this section provides general information about detention requirements and parole considerations to gain a fuller understanding of the process.

Section 235(b)(1)(B)(iii)(IV) of the INA mandates the detention of an alien during the credible fear determination process and, if no credible fear is found, until INS removes the alien. An alien who is subject to detention can be detained in an INS contract facility (e.g., Elizabeth Detention Center), an INS Service Processing Center (SPC) (e.g., Krome), a local jail, or a hotel/motel.

Although the regulations at § 235.3(b)(4)(ii) specify that the Attorney General makes parole determinations as a matter of discretion for a medical emergency or to meet a legitimate law enforcement objective, this authority has been delegated to the Commissioner and his designees, including INS District Directors.

Pursuant to 8 CFR 212.5(a), a District Director may exercise discretion to parole an alien from detention for urgent humanitarian reasons or for significant public benefit, assuming that the alien presents neither a security risk nor a risk of absconding.

A District Director may parole an alien from detention at any time after an alien's arrival at a detention site. The factors a District Director considers include, but are not limited to, the following:

- the alien's identity, and whether it has been established with a reasonable degree of certainty;
- the possibility for community support, such as whether the alien has a relative, sponsor, or other community ties;
- whether the alien may leave the United States or fail to appear before the Immigration Court for section 240 proceedings;
- the alien's medical condition, both mental and physical, and
- whether an APSO found that the alien may be subject to a mandatory bar to asylum status.

IV.D. DISSOLUTION OF A CREDIBLE FEAR CLAIM

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

During the course of the credible fear process, an alien may express a desire to be removed from the U.S. and no longer pursue a credible fear claim.

If an alien expresses such a desire to an APSO, the APSO must speak to the alien to ensure that he or she is aware of the consequences of dissolving an asylum claim, and to ascertain why the alien no longer wishes to remain in the credible fear process.

The APSO must read and explain to the alien the Request for Dissolution of Asylum Claim. If, after the APSO explained the contents of the form, the alien changes his or her mind and wants to remain in the credible fear process, the APSO continues processing the alien through the credible fear process.

If, however, the alien signs the Request for Dissolution of Asylum Claim, the APSO does not process the case any further. He or she refers the case to the INS district office staff member who is responsible for the alien's detention. Generally, the INS district officer will determine whether to offer the alien a withdrawal of his or her application for admission or to issue a Form I-296, Notice to Alien Ordered Removed/Departure Verification, to the alien; however, a District Director may permit an APSO to make this determination. Regardless of whether the deciding officer is an INS district officer or an APSO, the option of offering the alien a withdrawal of his or her application for admission must be considered before a formal order of removal (Form I-296) is signed and served by an INS officer (APSO or district officer). Form Required:

Request for Dissolution of Asylum Claim, attached to Langlois, Joseph E. INS Asylum Division. Dissolution of Credible Fear Claims, Memorandum to Asylum Office Directors, Deputy Directors, and Supervisory Asylum Pre-Screening Officers (Washington, DC: 26 July 2000), 2 p.
[Appendix T]

1. Alien is NOT Offered the Opportunity to Withdraw the Application for Admission

Once a decision has been made to not allow an alien to withdraw his or her application for admission, it is generally the

responsibility of the INS district, not an APSO, to complete the bottom portion of the Form I-860, which is the Notice and Order of Expedited Removal.

The asylum office closes the case in APSS by updating the Close Case (CLOS) screen within seven (7) business days from the date the asylum office is notified of the INS district office's decision. The reason for the closure is "T2 -DISSOLVE"-dissolution of the interview request. APSS Updates Required:
"CLOS" - T2

2. Alien is Offered the Opportunity to Withdraw the Application for Admission

Once a decision has been made to allow an alien the opportunity to withdraw his or her application for admission, the SAPSO should consult with the INS district to determine whether an INS district officer or an APSO will prepare a Form I-275, Withdrawal of Application for Admission/Consular Notification (Appendix Y), which permits the alien to withdraw his or her application for admission.

If the APSO is preparing the Form I-275, asylum office staff should close the case in APSS by updating the CLOS screen, selecting "T6- WITHDRAWAL" in the REASON field. See this Manual, Section IV.M, Withdrawal of an Application for Admission, for more information.

APSS Updates Required:
"CLOS"- T6

IV.E. FILE MANAGEMENT

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Detention staff of the INS district office having jurisdiction over the detention site keeps the A-files of detained aliens. Therefore, unless local arrangements have been made for the asylum office to control an A-file, an asylum office usually will not keep an alien's A-file during the credible fear process.

An asylum office must therefore create its own credible fear folders, which contain all documents related to the credible fear determination. At a minimum, the folders must contain copies of all documents that were served on the alien and Immigration Court. The original versions of these documents, which include but are not limited to those listed below, should remain in the A-file.:

1. Positive Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet
- Interview Notes
- Form I-862, Notice to Appear
- Form I-860, Notice and Order of Expedited Removal
- Form I-867, Parts A&B, Sworn Statement and Jurat
- Comments and accompanying documents from HQASM/QA, if any
- Notes or memos to the file documenting contact with a consultant, if any
- Memo of Adverse Information, if any.

2. Negative Credible Fear Determination

- Form I-870, Record of Determination/Credible Fear Worksheet
- Interview Notes - non-Q&A and Q&A format, both handwritten and typed
- Assessment of Negative Credible Fear Claim
- Form I-860, Notice and Order of Expedited Removal
- Form I-867, Parts A&B, Sworn Statement and Jurat

- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge
- Form I-863, Notice of Referral to Immigration Judge, if applicable
- Comments from HQASM/QA regarding negative credible fear determination
- Notes or memos to the file documenting contact with a consultant, if any
- Memo of Adverse Information, if any.

3. Maintenance and Retention of Credible Fear Records

The Asylum Division (HQASM) requires an office to keep records of the credible fear cases that APSOs have completed. Therefore, each asylum office Director must decide how the office will maintain its records. For example, an office may keep the credible fear folders, scan the documents from the folder onto disks, or create a database that contains relevant information about a credible fear claim. Whatever system the Director chooses, it must enable an asylum office to provide information about a case in the event of an inquiry.

In the event the SAPSO and asylum office Director conclude that they lack space to continue storing their office's credible fear folders, they may dispose of the folders by shredding their contents. Before shredding, however, the SAPSO must ensure that

- More than six months have passed since the Clock-in Date,
- The case has not been subjected to an unusual amount of scrutiny, and
- All necessary APSS updates to complete the case have been performed.

IV.F. INTERPRETERS – DOCUMENTING COSTS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

The INS currently has a contract with Language Services Associates (LSA), which centralizes the payment of funds directly to LSA from INS in Washington, DC. To ensure that LSA is charging INS only for those interpreter calls APSOs actually make, each SAPSO is responsible for keeping a log of interpreter service usage and verifying this log against the LSA bills. For general accountability, a SAPSO should maintain a log for all interpreter services used, not just for LSA.

The attached APSO Supervisor's Log of Interpreter Service Usage is an example of the type of log a SAPSO must keep. Each asylum office may use this form or a local equivalent, as long as it contains the same information as the example at Appendix U. Every two weeks, a member of HQASM's staff forwards to every SAPSO via cc:mail an invoice of those calls that LSA claims were made by an APSO. The SAPSO must respond to the cc:mail by stating either that the bill is correct, or that the bill contains incorrect charges. If the bill contains incorrect charges, the SAPSO must identify which calls were incorrectly billed and why the information on the bill is incorrect. Since the government is responsible for paying invoices in a timely manner, the SAPSO response should be completed within one week of invoice receipt.

Appendix U:
APSO Supervisor's Log of Interpreter Service Usage

IV.G. MANDATORY BARS - FOUO

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: 6/18/2015

Mandatory bars to being granted asylum do not affect the determination of whether an alien has a credible fear of

persecution or torture. However, whenever a mandatory bar appears to apply to an alien, an asylum office must flag the possible bar on the I-870 and in APSS.

Asylum offices must also complete a *Memo of Adverse Information* whenever an APSO, in conjunction with the SAPSO, has reasonable grounds to believe that a mandatory bar may apply to an alien, except for the mandatory bar of firm resettlement. The memo should include a detailed explanation for the basis for believing that the alien may be subject to a bar as well as an explanation of how the possible bar was discovered (for example, through testimony or security check).

When a *Memo of Adverse Information* is completed, the asylum office must send the memo to ICE to notify them of the possible mandatory bar to asylum.

The APSO must include the original memo on the non-record side of the A-file and place a copy in the alien's W-file.

Whenever the possible mandatory bar relates to a terrorism-related inadmissibility ground, the asylum office must also email an electronic copy of the *Memo of Adverse Information* to the ASYLUM QA – CREDIBLE FEAR mailbox at Asylum Headquarters with the subject line, "ZXX CF Adverse Info Memo TRIG A000000000." The memos should be saved using that same naming convention.

Appendix W: Memo of Adverse Information

IV.H. NACARA-ELIGIBLE ALIENS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

An alien who appears eligible to apply for benefits under NACARA 202 or NACARA 203 is subject to expedited removal, just as any other arriving alien who seeks admission through misrepresentation or without documentation. However, an APSO must be aware of special considerations for ABC class members.

An ABC class member who is apprehended at the time of entry after December 19, 1990, loses eligibility for ABC benefits and may be placed into expedited removal. If the ABC class member expresses a fear of persecution or harm upon return to his or her home country, the inspecting officer refers the alien for a credible fear interview according to established procedures.

The SAPSO coordinates with the NACARA/ABC Coordinator within the asylum office to issue the appropriate ABC ineligibility letter and, if the applicant has an asylum application pending with the asylum office, to make the necessary updates to RAPS.

The ABC settlement agreement prohibits removal of any class member for 30 days from the date the class member is notified of his or her loss of ABC benefits. This 30 days allows the class member to challenge the adverse finding in federal court. Therefore, unless the class member waives the right to challenge the finding of ABC ineligibility, INS may not remove a class member who is found not to have a credible fear until 30 days have passed since service of the ABC ineligibility letter.

See the ABC/NACARA Procedures Manual, Class Members Apprehended at the Border at the Time of Entry

IV.I. QUALITY ASSURANCE REVIEW

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections: IV.I (6/12/14)

The Headquarters Asylum Division Quality Assurance Branch (HQASM/QA) monitors the quality of credible fear determinations by conducting pre-decisional review of credible fear determinations. Pre-decisional review by HQASM/QA of the following types of cases is **mandatory**. An APSO may not serve a determination on an alien whose case falls into one of the categories described below, until HQASM/QA concurs in the determination:

- Random sampling of positive and negative credible fear of persecution and torture determinations, at established numbers of sample.
- High-profile claims.
- Claims involving novel legal issues.
- Any case in which the Asylum Office Director seeks review by HQASM/QA.

Before sending the case to HQASM/QA for review, the SAPSO must have concurred in the decision. Once all necessary parties have concurred in the decision, the Asylum Office must send the following documents to HQASM/QA by sending an email to the Asylum QA – Credible Fear mailbox:

Required in all cases

QA Referral Sheet
Form I-860
Form I-213
Form I-867A & I-867B
M-444
Interview Notes
CF Determination Checklist
Form I-870

Required, if negative

I-863
I-869

Required, if positive

NTA

Required, if present in A-file

G-28
Any supporting documents submitted by the alien
Any documents relied upon in making the determination (other than routine country conditions reports)
Any relevant USCIS memoranda in file

A member of HQASM/QA must respond to the SAPSO in writing (by e-mail), indicating whether HQASM/QA concurs in the decision or suggests modification. None of the comments from HQASM/QA remain part of the A-file.

IV.J. STATUS CLAIMS

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

An Inspector must verify the status of an alien who claims to be a U.S. citizen, lawful permanent resident (LPR), asylee, or refugee. If the Inspector cannot verify the alien's status claim, he or she places the alien into expedited removal but cannot order the alien removed until an immigration judge has made a determination on the alien's claimed status.

When the individual making the unverified status claim also claims a fear of persecution or harm upon return to his or her country, the Inspector should refer the alien for a credible fear interview. In some jurisdictions, however, an Inspector may place an alien before an immigration judge for a status determination before the credible fear process. 8 CFR 235.3(b)(5)

1. Inspector Places the Alien before an Immigration Judge for a Status Determination before the Credible Fear Process

If the immigration judge determines that the alien does have the status he or she claims, the immigration judge terminates proceedings and vacates the expedited removal order.

If the immigration judge determines that the alien does NOT have the status he or she claims, the alien receives a credible fear determination according to the procedures in paragraph 2 of this section.

2. Credible Fear Process for Status Determination Cases

a. Positive Credible Fear Determination

The APSO prepares the documents for a positive credible fear determination outlined in the Preparing a Determination section in III.H of the Manual, which are served upon the alien and filed with the Immigration Court according to procedures in the Manual's sections III.J, Serving the Determination on the Alien and III.K, Post-Service Processing, respectively. If the alien has not already seen an immigration judge for a review of the status claim, the immigration judge will make a determination on the alien's status claim during the section 240 proceedings.

b. Negative Credible Fear Determination

i. Alien has NOT seen an immigration judge for a review of the status claim

- If the alien requests immigration judge review or refuses to request or decline such review, the APSO places a " " in box 4 on Form I-863 and indicates which status claim applies to the individual's case. In addition, the APSO places a " " in box 1.
- If the alien affirmatively declines review, the APSO places a " " only in box 4 on Form I-863 and indicates which status claim applies to the individual's case
- Asylum office personnel serve the documents upon the alien and file them with the Immigration Court. See Manual sections III.J, Serving the Determination on the Alien, and III.K, Post-Service Processing, for specific procedures.

ii. Alien has already seen an immigration judge for a review of the status claim

If the alien requests immigration judge review or refuses to request or decline such review, the APSO places a " " only in box 1 on Form I-863. Asylum office personnel serve the documents upon the alien and file them with the Immigration Court. See Manual sections III.J, Serving the Determination on the Alien, and III.K, Post-Service Processing, for specific procedures.

- If the alien affirmatively declines review of the determination, the APSO refers the alien to the INS district for removal of the alien.

IV.K. STOWAWAYS

Reviewed, No Substantive Changes since 2002

Sections:

Will be Updated, Changes Pending Review

Sections:

Finalized Updates

Sections:

An alien stowaway is exempt from the provisions of expedited removal; however, if the stowaway expresses a fear of harm or persecution, INS must detain the stowaway and refer him or her to an asylum office for a credible fear interview pursuant to 8 CFR 208.30. This includes unaccompanied minors. 8 CFR 235.1(d)(4)

A credible fear interview and determination for a stowaway follow the same rules and procedures as an interview and determination for an alien placed into expedited removal. The only difference relates to the types of documents an APSO prepares and serves upon the stowaway and files with the Immigration Court. For an overview of the process for an alien in expedited removal compared with the credible fear process for an alien stowaway, see Appendix X. APSS Updates Required:

Place an "X" next to "Stowaway" on the PREC screen.

Appendix X:

Chart- Overview of Process, Aliens in Expedited Removal vs. Stowaways, 1 p.

1. Positive Credible Fear Determination

a. Preparing the Documents

All of the documents and APSS updates listed in section III.H, Preparing a Determination, also are completed for a stowaway, except that the APSO prepares a Form I-863 instead of a Form I-862. On Form I-863, the APSO puts a " " in box 3 and puts a " " in the box that states, "Stowaway: credible fear determination attached."

b. Serving the Determination on the Stowaway

The procedures for serving the determination outlined in section III.J, Serving the Determination on the Alien, are the same for a stowaway. The APSO serves the following documents:

- Form I-870, Record of Determination – copy
- Form I-863, Notice of Referral to Immigration Judge - - copy of original that was signed by SAPSO or one (1) of several I-863s that the SAPSO signed
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy (only if the alien was not previously given a copy of the form)
- List of Free Legal Services
- EOIR –33 Change of Address Form. In the event the District Director paroles the alien from detention, the alien must be aware of his or her obligation to notify the court of any changes in address.

c. Filing the Determination with the Immigration Court

The asylum office files the following documents with the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge – original
- Form I-870, Record of Determination – copy
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy

An Immigration Court's court administrator may accept documents for filing by facsimile, rather than in-person or via mail. Each asylum office must coordinate with the court administrator to determine the local court's requirements.

2. Negative Credible Fear Determination

a. Preparing the Documents

All of the documents and APSS updates listed in section III.H, Preparing a Determination, are the same for a stowaway, except for the following:

- The APSO does not complete a Form I-860.
- On Form I-863, the APSO puts a " " in box 2 in the event the stowaway requests immigration judge review, or the stowaway refuses to either request or decline such review.

b. Serving the Determination on the Stowaway and Filing it with the Immigration Court

The procedures and documents outlined in section III.J, Serving the Determination on the Alien, are the same for a stowaway, except that an APSO does not serve a Form I-860 on the stowaway. If the stowaway declines immigration judge review of his or her determination, the APSO refers the stowaway to a Detention Officer for removal from the U.S.

If a stowaway requests review of the determination, or refuses to request or decline such a review, the asylum office files the following documents with the Immigration Court:

- Form I-863, Notice of Referral to Immigration Judge – original
- Form I-870, Record of Determination – copy
- Form I-869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge – original
- Form I-867, Parts A&B, Sworn Statement and Jurat – copy
- Typed Q&A notes – copy

An Immigration Court's court administrator may accept documents for filing by facsimile, rather than in-person or via mail. Each asylum office must coordinate with the court administrator to determine the local court's requirements.

IV.L. VISA WAIVER PERMANENT PROGRAM (VWPP)

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

The VWPP waives the nonimmigrant visa requirement for nationals of those countries listed in 8 CFR 217.2(a). The Visa Waiver Pilot Program ended on April 30, 2000. The Visa Waiver Permanent Program went into effect October 30, 2000. Both are referred to as "VWPP." Individuals who seek admission under the VWPP and are determined to be ineligible for admission, including those who fraudulently claim to be nationals of a VWPP country, are not subject to expedited removal and do not receive a credible fear interview. If such persons request asylum, they are referred directly to an immigration judge for proceedings in accordance with 8 CFR 208.2(c)(1).

An individual is not considered to be seeking admission under the VWPP unless he or she has completed and signed a green Form I-94W, which should be attached to the alien's A-file. An APSO may interview any alien who used a passport from one of the countries listed in 8 CFR 217.2(a) if that alien did not complete and present a signed Form I-94W to an Inspector.

During the period between the expiration of the Visa Waiver Pilot Program on April 30 and enactment of the Visa Waiver Permanent Program on October 30, 2000, the INS paroled aliens into the U.S. for a period of ninety (90) days if the alien would have been eligible for admission to the U.S. under the VWPP. If such an alien's parole expired or was revoked by the District Director, the alien is subject to expedited removal. Aliens who, upon their arrival, were determined ineligible for the parole described above, were subject to expedited removal.

IV.M. WITHDRAWAL OF AN APPLICATION FOR ADMISSION

<u>Reviewed, No Substantive Changes since 2002</u>	<u>Will be Updated, Changes Pending Review</u>	<u>Finalized Updates</u>
Sections:	Sections:	Sections:

Once an INS district officer has determined that an alien will be given the opportunity to withdraw his or her application for admission after the dissolution of the credible fear claim, either an INS district officer or an APSO prepares a Form I-275, Withdrawal of Application for Admission/Consular Notification. The SAPSO coordinates with the INS district office having jurisdiction over the alien to determine which party will prepare a Form I-275 and the other forms that accompany a withdrawal. Appendix Y: Form I-275, Withdrawal of Application for Admission/Consular Notification

1. Asylum Office is NOT Responsible for Preparing Form I-275

If an Immigration Officer will process the paperwork for a withdrawal, including the Form I-275, the asylum office closes the case in APSS by updating the Close Case (CLOS) screen, within seven (7) business days of the date the Asylum Officer prepares the Request for Dissolution of Asylum Claim form (Appendix T). The reason for the closure is "T6" – I-275 withdrawal issued.

APSS Update Required:
"CLOS" – T6

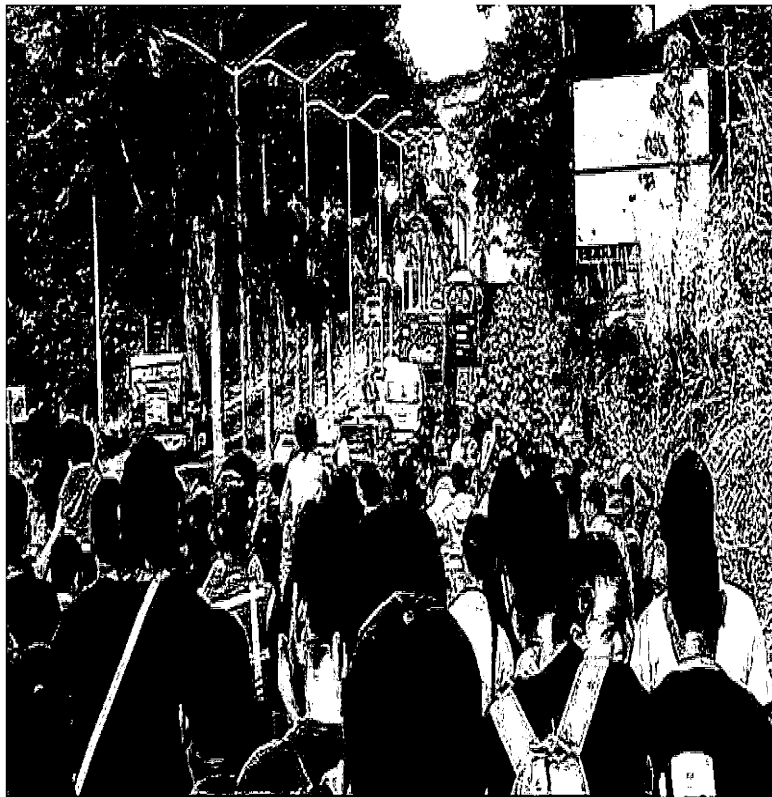
2. Asylum Office Prepares a Form I-275

If an APSO prepares the Form I-275, he or she completes a Form I-275, Withdrawal of Application for Admission/Consular Notification, with the alien according to the following instructions:

- Complete the top portion on page 1. Place a " " in the box that states, "Application for Admission Withdrawn."
- Confer with the INS district office regarding the type of information to place in the section called Reasons
- Print the name and title of the APSO at the bottom of page 1, and sign where indicated.
- Ask the alien to date and sign the boxed section on page 2. Place a " " in the box that states "by an immigration officer." Appendix Z:

Virtue, Paul. INS Office of Programs. Withdrawal of Application for Admission (IN 98-05), Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, ODTF Glynco and ODTF Artesia (Washington, DC: 22 December 1997), 3 p.
After completing the Form I-275, the APSO attaches the Form I-867, Parts A&B that was completed at the time the alien dissolved his or her credible fear claim, and provides the documents to the contact person at the INS district office. The INS district office is responsible for completing the paperwork necessary for the alien to withdraw the application for admission, and for removing the alien.

The asylum office closes the case in APSS by updating the Close Case (CLOS) screen within seven (7) business days of the date the alien signs the Form I-275. The reason for the closure is "T6" – I-275 withdrawal issued. APSS Update Required:
"CLOS" – T6



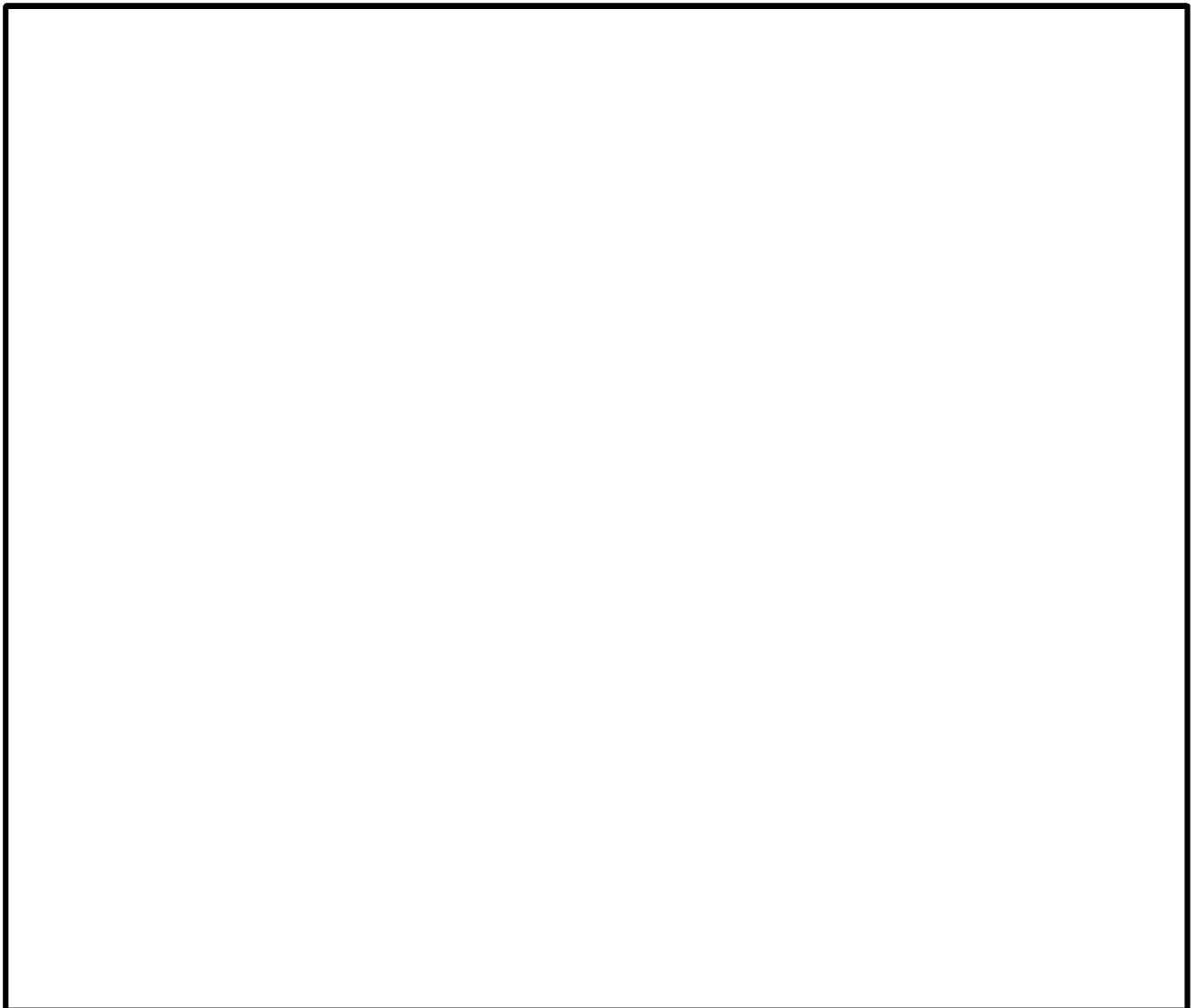
From: Symons, Craig M
Sent: Friday, February 16, 2018 12:27 PM
To: Nuebel Kovarik, Kathy; Stoddard, Kaitlin V; Cissna, Francis
Subject: RE: Carl's Credible Fear Fixes
Attachments: RE: Feedback on CF/RF Training; RAIO Credible Fear Lesson Plan

Here are a couple of other e-mails he sent on CF that may be helpful.

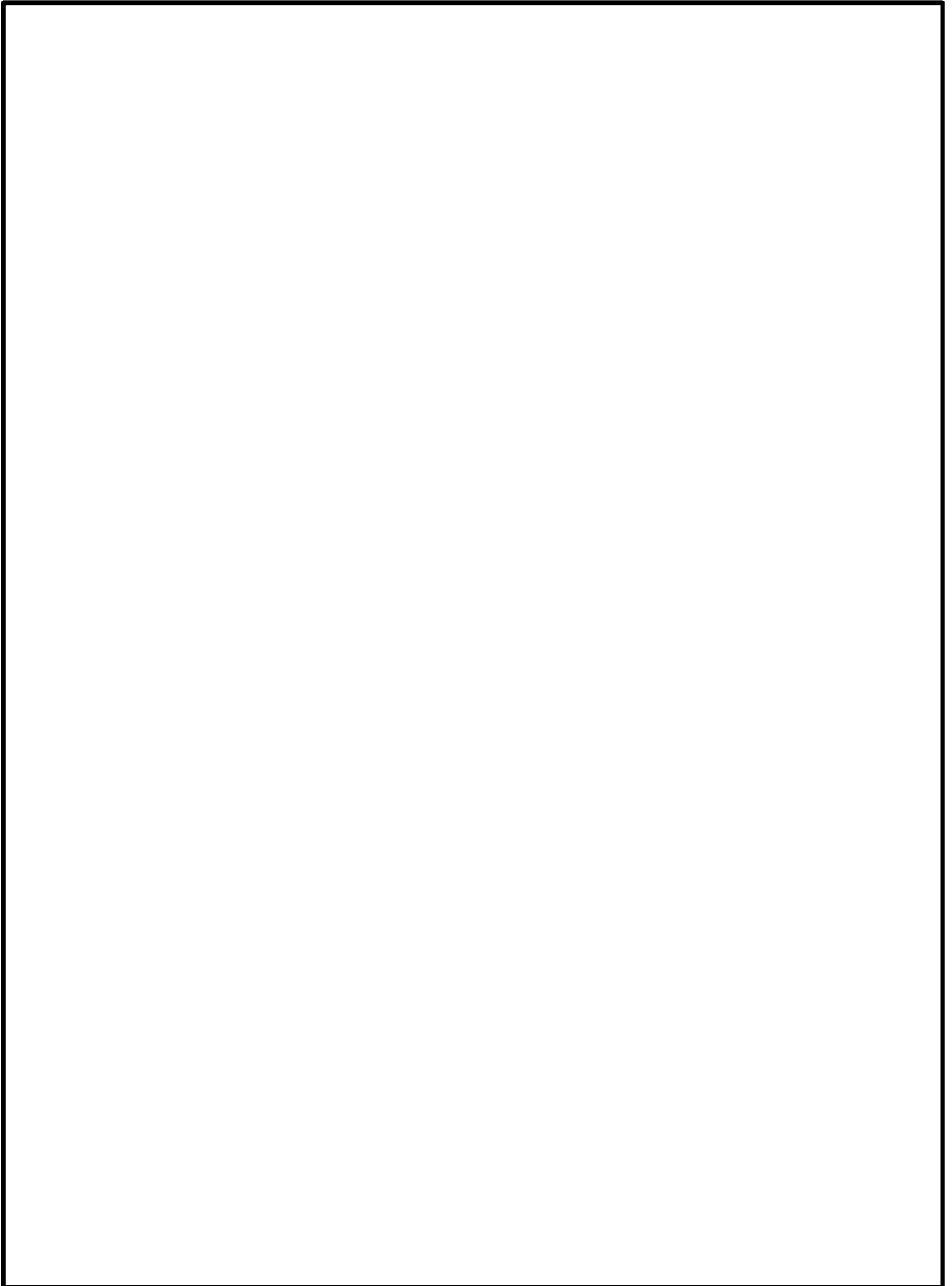
From: Nuebel Kovarik, Kathy
Sent: Friday, February 16, 2018 1:11 PM
To: Stoddard, Kaitlin V; Symons, Craig M; Cissna, Francis
Subject: Carl's Credible Fear Fixes

From: Risch, Carl C
Sent: Monday, March 06, 2017 3:53 PM
To: Symons, Craig M; Nuebel Kovarik, Kathy
Subject: RE: Feedback on CF/RF Training

(b)(5)



(b)(5)



From: Kim, Ted H
Sent: Sunday, March 05, 2017 10:57 AM
To: Risch, Carl C; Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Subject: RE: Feedback on CF/RF Training

I forgot to note that certain provisions in the SOP have been superseded by memos and other guidance that have not yet been incorporated into the SOP. In the supervisory review section, for example, we have not yet updated the language about all negative determinations coming to HQ. That requirement was superseded by guidance several years ago that a random sampling of both positive and negative determinations come to HQ for QA review in equal proportions. I will send that guidance to you separately tomorrow, along with our plans for incorporating the separate pieces of guidance into the SOP. We can also brief you in person when we meet to provide more details into what goes into the supervisory review from a QA perspective--things that are not necessarily contained in a procedural document like our CFPM. For now, we just wanted to forward our CFPM to you as promised, so you could see how we organize our procedures apart from our lesson plans.

From: Kim, Ted H
Sent: Sunday, March 05, 2017 9:16:14 AM
To: Risch, Carl C; Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Subject: RE: Feedback on CF/RF Training

Here is the CF SOP. Supervisory review is addressed on p.21. Ted

From: Risch, Carl C
Sent: Saturday, March 04, 2017 9:13 AM
To: Ruppel, Joanna; Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Thanks, Joanna. If there's a CF SOP which addresses supervisory review, we would like to review it. It can certainly wait until Monday.

Carl

From: Ruppel, Joanna
Sent: Saturday, March 04, 2017 8:08 AM
To: Lafferty, John L; Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Kim, Ted H
Subject: RE: Feedback on CF/RF Training

I will be traveling back to D.C. Tuesday morning and not into the office until around 3:00. But it is fine if you want to meet to discuss without me. Amal Brady has my calendar if you prefer that I be there and this can wait until I get back.

Also, just want to be sure that the team reviewing the lesson plans also has the SOPs. Asylum generally provides substantive content via lesson plan and procedural guidance via SOP.

Joanna

Joanna Ruppel
Acting Associate Director
USCIS Refugee, Asylum and International Operations



(b)(6)

From: Lafferty, John L
Sent: Friday, March 03, 2017 9:24 PM
To: Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Carl,

Thanks for the response. I don't have access to Joanna's calendar to confirm that she is available at that time, but Ted and I will be available on Tuesday.

Have a good weekend.

John

From: Risch, Carl C
Sent: Friday, March 03, 2017 8:26 PM
To: Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: RE: Feedback on CF/RF Training

Could we meet immediately after the Expanded Leadership Meeting on Tuesday?

(b)(5)



(b)(5)

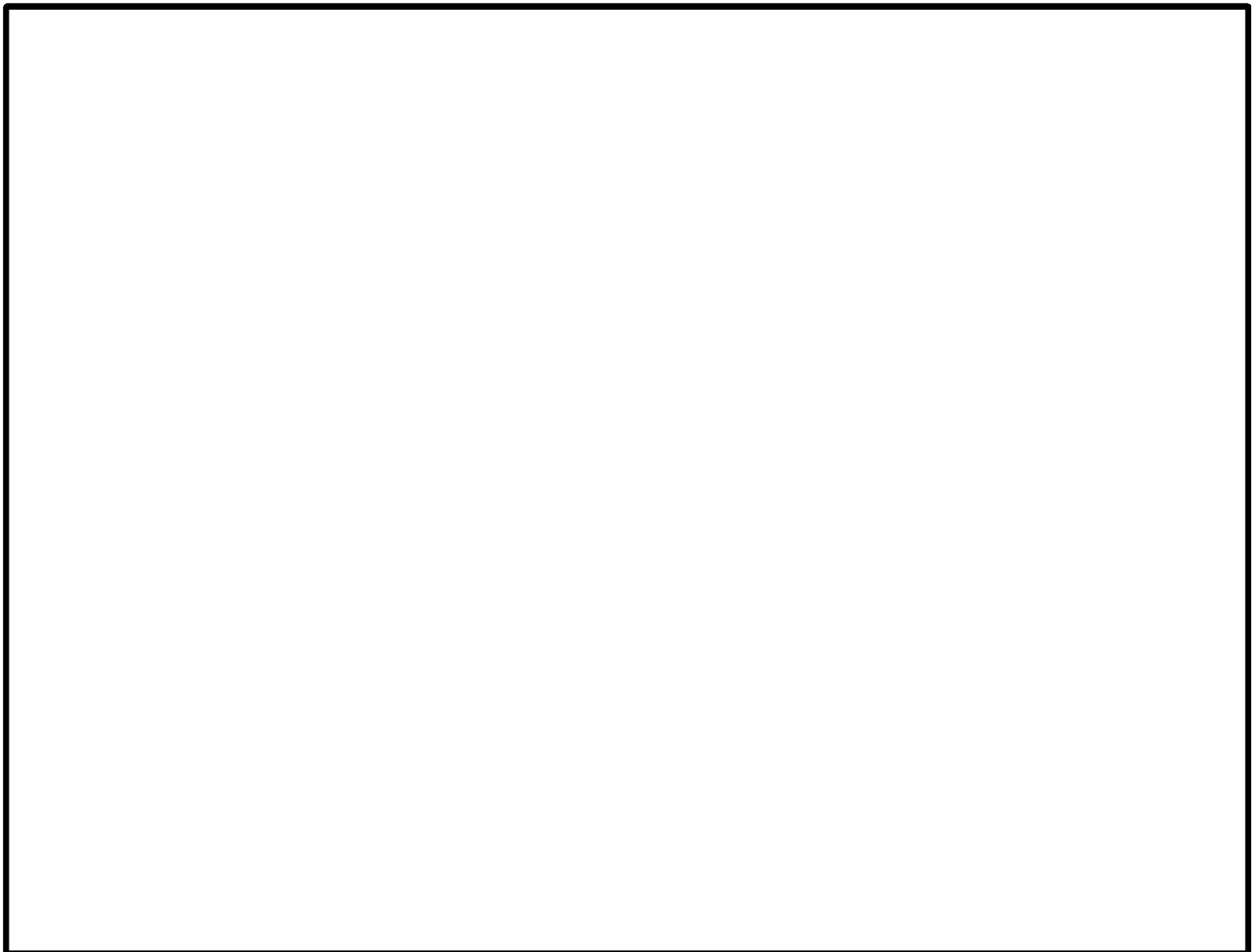


Carl

From: Walters, Jessica S
Sent: Friday, February 10, 2017 6:34 PM
To: Shah, Dimple; Symons, Craig M; Risch, Carl C; Hamilton, Gene; Kovarik Nuebel, Kathy; Maher, Joseph; Nielsen, Kirstjen; Cissna, Tiffany; Higgins, Jennifer
Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S
Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Dimple, Craig and Carl:

(b)(5)



Please let us know if you would like additional information.

Thanks,

Jessica

Jessica S. Walters
Senior Advisor | Office of the Director and Deputy Director
U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security|
Ofc: [REDACTED] | Cell: [REDACTED]

(b)(6)

Referred to Department of Homeland Security

From: Symons, Craig M

Sent: Friday, February 10, 2017 8:21 AM

To: Walters, Jessica S [REDACTED] (b)(6)

Cc: Scialabba, Lori L [REDACTED]; Renaud, Tracy L [REDACTED];

Young, Todd P [REDACTED]; Walters, Jessica S [REDACTED];

Shah, Dimple [REDACTED]; Hamilton, Gene [REDACTED]; Kovarik

Nuebel, Kathy [REDACTED]; Risch, Carl C [REDACTED]; Maher,

Joseph [REDACTED]; Cissna, Tiffany [REDACTED]; Nielsen, Kirstjen

[REDACTED]; Hamilton, Gene [REDACTED]; Higgins, Jennifer

Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Jessica,

Attached please find the consolidated thoughts and concerns that Dimple, Carl, and I have. Dimple and Carl – please let us know if I missed anything.

Thank you,

Craig

Referred to Department of Homeland Security

Referred to Department of Homeland Security

From: Walters, Jessica S
Sent: Thursday, February 09, 2017 2:02:41 PM
To: Hamilton, Gene; Nielsen, Kirstjen; Higgins, Jennifer
Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S
Subject: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Good afternoon:

Please find attached USCIS' briefing memo regarding updates to the Credible Fear and Reasonable Fear lesson plans, signed by Acting Director Lori Scialabba. Also attached are executive summaries of the changes to the lesson plans.

Please let us know if you have any questions.

Thanks,

Jessica

Jessica S. Walters
Senior Advisor | Office of the Director and Deputy Director
U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security |
Ofc: [REDACTED] Cell: [REDACTED]

(b)(6)

From: Lafferty, John L
Sent: Friday, March 03, 2017 1:37 PM
To: Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: FW: Feedback on CF/RF Training

Kathy, Carl and Craig,

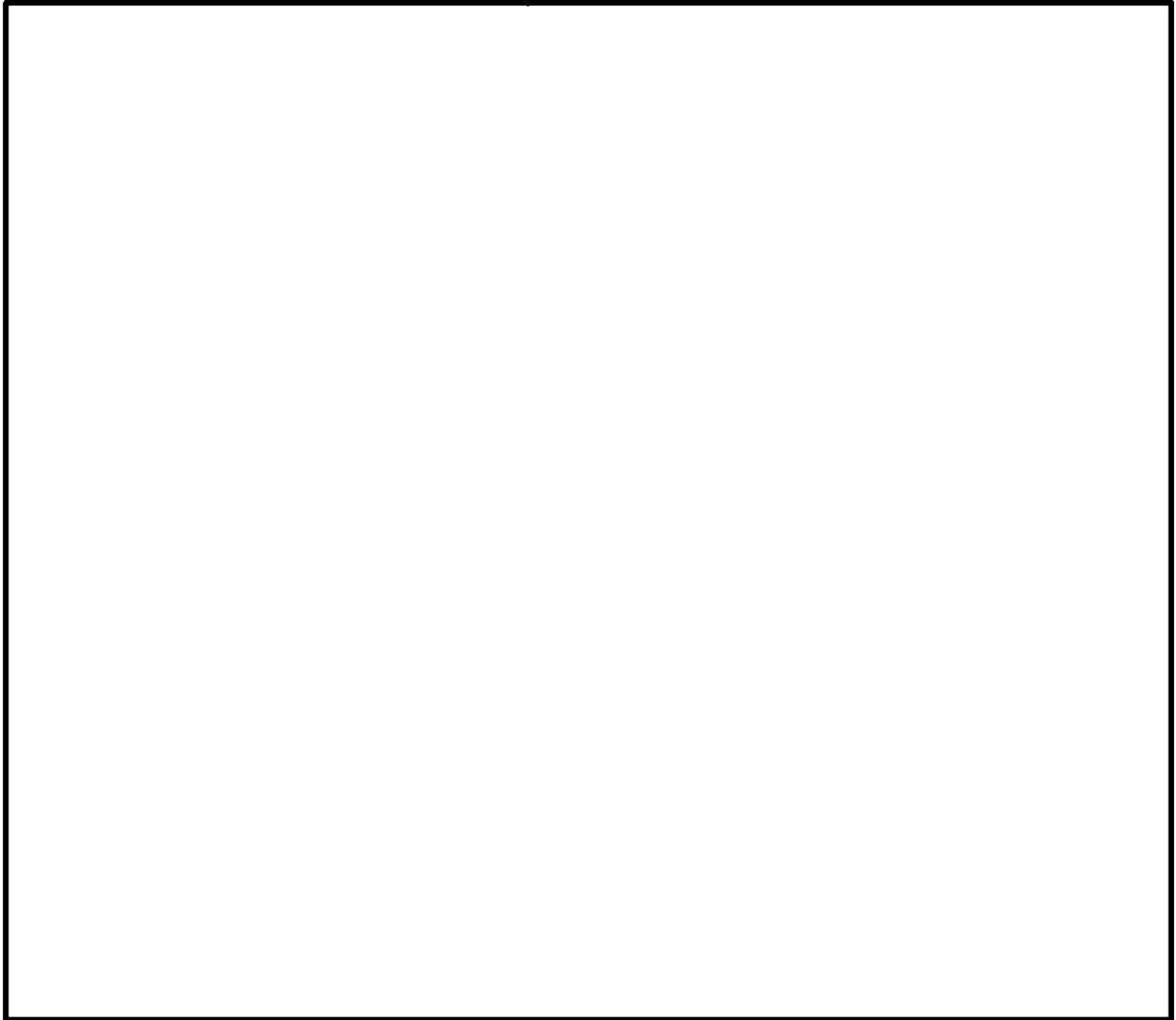
I thought that it might be useful for us to meet to have a follow-up discussion on the issues highlighted below and in the attached document. Please let me know if you would like to meet and discuss in greater detail. I'm in all next week and we will do everything that we can to work around your busy schedules.

John

From: Farnam, Julie E
Sent: Wednesday, March 01, 2017 4:06 PM
To: Lafferty, John L; Kim, Ted H
Cc: Ruppel, Joanna
Subject: Feedback on CF/RF Training

John/Ted—

(b)(5)



If you'd like to set up a meeting with Carl, Kathy, and Craig, to discuss further please let me know.

Thank you,
Julie Farnam
Senior Advisor
Field Operations Directorate
U.S. Citizenship and Immigration Services

(d) (b)(6)

(c) [REDACTED] (b)(6)

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From: Risch, Carl C
Sent: Wednesday, January 25, 2017 8:26 AM
To: Symons, Craig M
Subject: RAIO Credible Fear Lesson Plan

(b)(6)

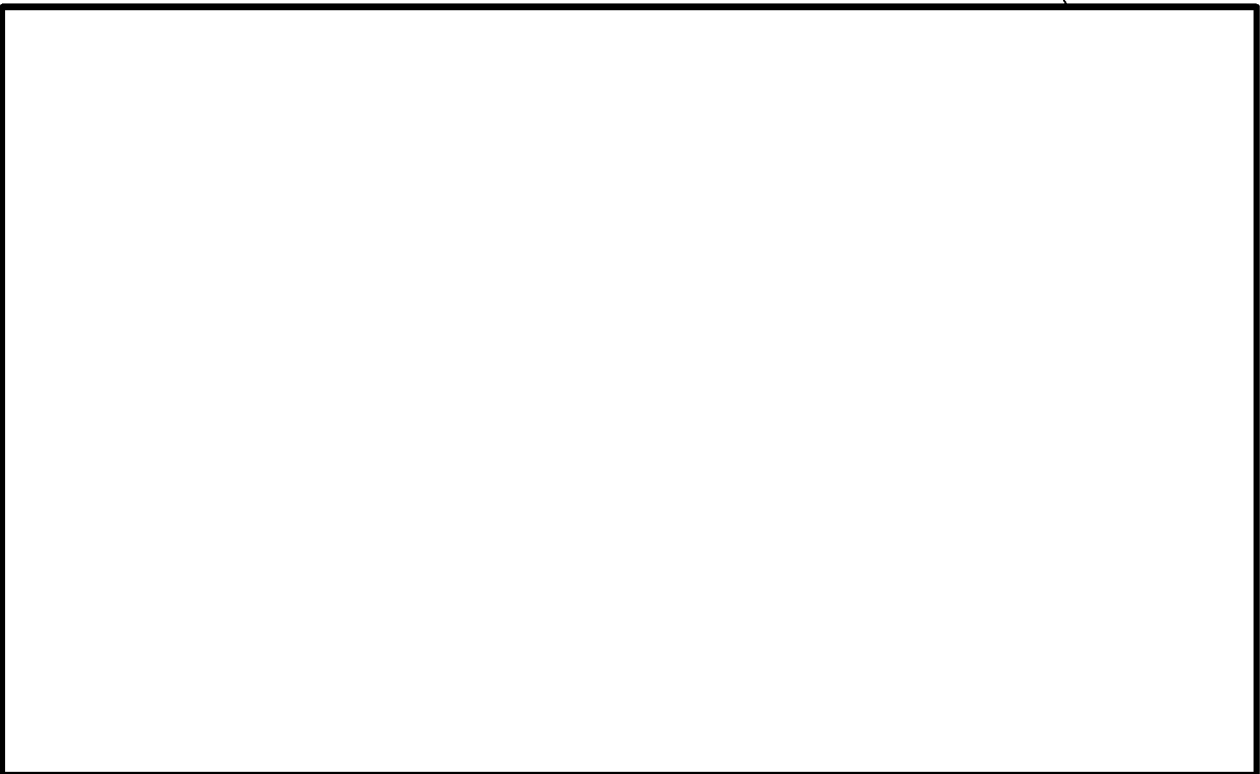


You might not have access to the ECN to see the lesson plan.

From: Risch, Carl C
Sent: Friday, March 03, 2017 7:26 PM
To: Lafferty, John L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ruppel, Joanna; Kim, Ted H
Subject: RE: Feedback on CF/RF Training
Attachments: DHS Feedback on Credible Fear and Reasonable Fear Lesson Plans.docx

Could we meet immediately after the Expanded Leadership Meeting on Tuesday?

(b)(5)

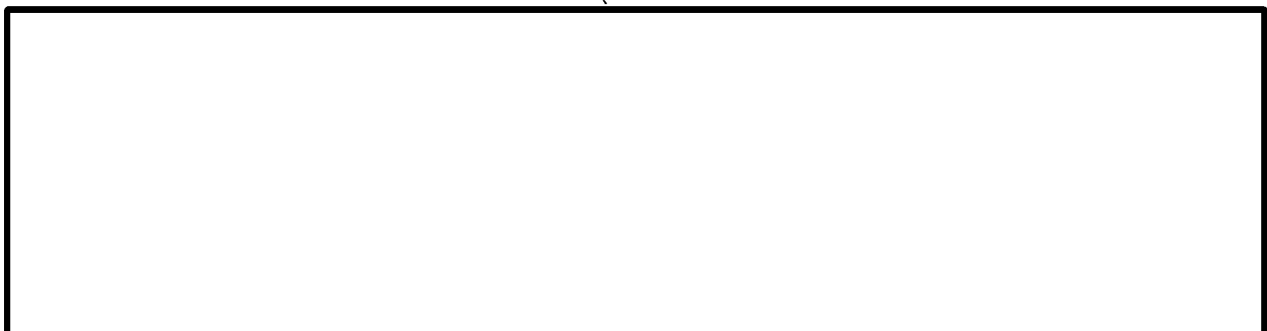


Carl

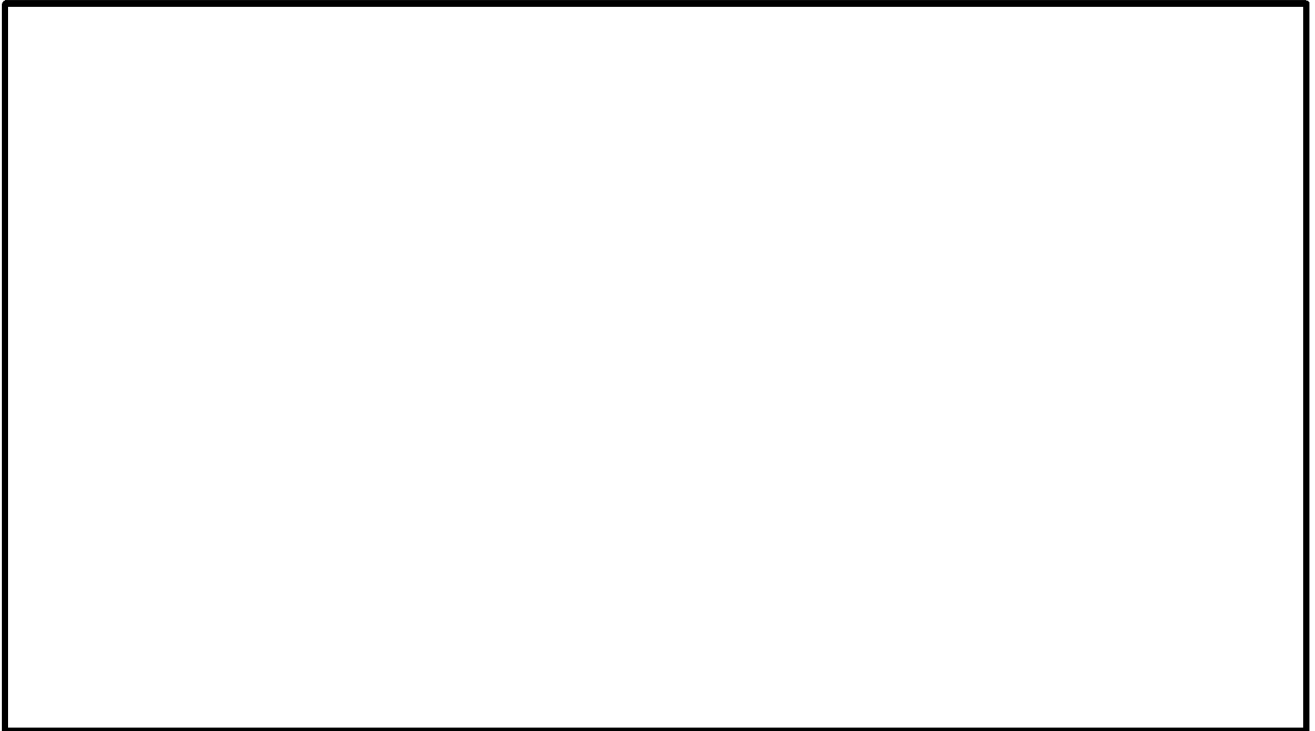
From: Walters, Jessica S
Sent: Friday, February 10, 2017 6:34 PM
To: Shah, Dimple; Symons, Craig M; Risch, Carl C; Hamilton, Gene; Kovarik Nuebel, Kathy; Maher, Joseph; Nielsen, Kirstjen; Cissna, Tiffany; Higgins, Jennifer
Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S
Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Dimple, Craig and Carl:

(b)(5)



(b)(5)



Please let us know if you would like additional information.

Thanks,

Jessica

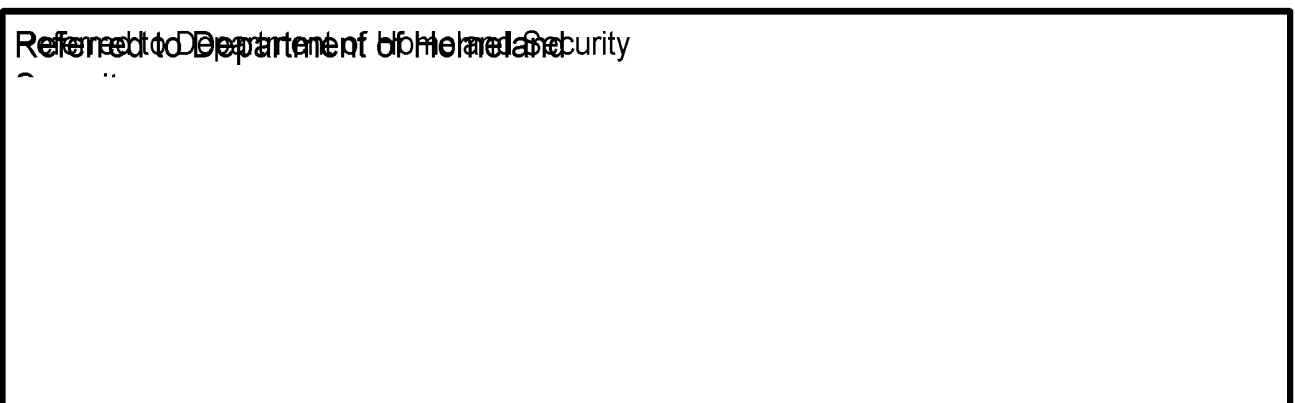
Jessica S. Walters

Senior Advisor | Office of the Director and Deputy Director

U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security

Ofc: [redacted] | Cell: [redacted]

(b)(5)



Referred to Department of Homeland Security

From: Symons, Craig M

Sent: Friday, February 10, 2017 8:21 AM

To: Walters, Jessica S [redacted] (b)(5)

(b)(6)

Cc: Scialabba, Lori L [redacted]; Renaud, Tracy L [redacted];
Young, Todd P [redacted]; Walters, Jessica S [redacted];
Shah, Dimple [redacted]; Hamilton, Gene [redacted]; Kovarik
Nuebel, Kathy [redacted]; Risch, Carl C [redacted]; Maher,
Joseph [redacted] Cissna, Tiffany [redacted]; Nielsen, Kirstjen
[redacted] Hamilton, Gene [redacted]; Higgins, Jennifer

(b)(6)

Subject: RE: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Hi Jessica,

Attached please find the consolidated thoughts and concerns that Dimple, Carl, and I have. Dimple and Carl – please let us know if I missed anything.

Thank you,
Craig

Referred to Department of Homeland Security

From: Walters, Jessica S
Sent: Thursday, February 09, 2017 2:02:41 PM
To: Hamilton, Gene; Nielsen, Kirstjen; Higgins, Jennifer
Cc: Scialabba, Lori L; Renaud, Tracy L; Young, Todd P; Walters, Jessica S
Subject: CF/RF Briefing Memo and Executive Summaries of Changes to the Lesson Plans

Good afternoon:

Please find attached USCIS' briefing memo regarding updates to the Credible Fear and Reasonable Fear lesson plans, signed by Acting Director Lori Scialabba. Also attached are executive summaries of the changes to the lesson plans.

Please let us know if you have any questions.

Thanks,

Jessica

Jessica S. Walters

Senior Advisor | Office of the Director and Deputy Director

U.S. Citizenship and Immigration Services | U.S. Department of Homeland Security |

Ofc: [REDACTED] Cell [REDACTED]

(b)(6)

From: Lafferty, John L

Sent: Friday, March 03, 2017 1:37 PM

To: Risch, Carl C; Symons, Craig M; Nuebel Kovarik, Kathy

Cc: Ruppel, Joanna; Kim, Ted H

Subject: FW: Feedback on CF/RF Training

Kathy, Carl and Craig,

I thought that it might be useful for us to meet to have a follow-up discussion on the issues highlighted below and in the attached document. Please let me know if you would like to meet and discuss in greater detail. I'm in all next week and we will do everything that we can to work around your busy schedules.

John

From: Farnam, Julie E

Sent: Wednesday, March 01, 2017 4:06 PM

To: Lafferty, John L; Kim, Ted H

Cc: Ruppel, Joanna

Subject: Feedback on CF/RF Training

John/Ted—

(b)(5)



(b)(5)



If you'd like to set up a meeting with Carl, Kathy, and Craig, to discuss further please let me know.

Thank you,
Julie Farnam
Senior Advisor
Field Operations Directorate
U.S. Citizenship and Immigration Services

(d)  (b)(6)
(c)

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Credible Fear and Reasonable Fear Lesson Plans

A major goal of the EO was to clarify the credible fear standard such that the claims do not continue to be improperly approved at ever increasing rates. The objective was to screen frivolous cases out of the process, rather than allowing individuals making those claims to screen into the country.

These documents do not appear to fully support this objective. Rather, they appear to be a compilation of tweaks and changes that were already contemplated to update the 2014 credible fear and reasonable fear lesson plans.

Given that we have already planned to train refugee officers on Monday and that these updated documents must be issued as soon as possible, we recommend the following:

1. In 2013, USCIS told Congress that 100% of credible fear determinations undergo supervisory review (<https://www.dhs.gov/news/2013/12/12/written-testimony-uscis-ice-and-cbp-house-committee-judiciary-hearing-titled-%E2%80%99Casylum>). However, we could not find any procedural guidance in USCIS/RAIO's training materials confirming this. If all positive credible fear determinations are indeed reviewed by supervisors, the lesson plan should describe this process to confirm that the reviews of approvals are meaningful. Our concern is that the current review process only applies to denials;
2. A full and complete review of the credible fear lesson plan that can commence at an agreed upon date; and
3. This more complete review should require RAIO to further research country conditions and determine whether internal relocation within the given countries can reasonably occur. If so, consistent with the regulations, these CF claims should be denied.

Additional notes on country conditions: While the lesson plans address internal relocation, they mainly focus on the language at 8 C.F.R. § 208.13 / 208.16. They do not provide sufficient guidance on how officers should use country condition materials to make determinations on the reasonableness of internal relocations. For purposes of addressing this border crisis, it would be helpful if the lesson plans are further developed to address the nationalities most encountered, the claims frequently made, and the credibility of such standard claims within the context of current country conditions. Further, in assessing the reasonableness of internal relocations, the lesson plans should provide additional guidance on how the factors at 8 C.F.R. § 208.13(b)(3) / 208.16(b)(3) should be considered and what weight they should be given in the context of current country conditions. For example, while the regulation at 8 C.F.R. § 208.13(b)(3) only states "geographic limitations" as one of the factors, the CF lesson plan goes beyond this and explains it as follows:

"Geographical limitations that could present barriers to accessing a safe part of a country or where an individual would have difficulty surviving due to the geography[.]"

We think that that factor should be put in context of not just that country's geographic limitations for internal relocation but also how those compare to the geographic limitations and other dangers in reaching the United States. In addition, we're concerned that the following sentence on p. 33 of the CF lesson plan will be misconstrued:

"There is no requirement that an applicant first attempt to relocate in his or her country before flight."

Although this may be a true statement, without further explanation it seems to be at odds with the applicant's burden to establish that "it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored." 8 C.F.R. § 208.13(b)(3)(i). We should add some additional clarification here to ensure that officers properly assess the reasonableness of internal relocations.

Lastly, while many of these changes cannot be made in time for Monday's training, we request that these additional updates to the lesson plans be provided to all CF / RF trained officers in the form of supplemental guidance once finalized. Thank you.

From: Nuebel Kovarik, Kathy
Sent: Friday, March 30, 2018 3:33 PM
To: Symons, Craig M; Cissna, Francis; Stoddard, Kaitlin V; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

OP&S is going to lead our 4th asylum summit next week to focus only on credible fear. Invite to go out soon.

From: Symons, Craig M
Sent: Friday, March 30, 2018 4:19 PM
To: Cissna, Francis; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans (b)(5)



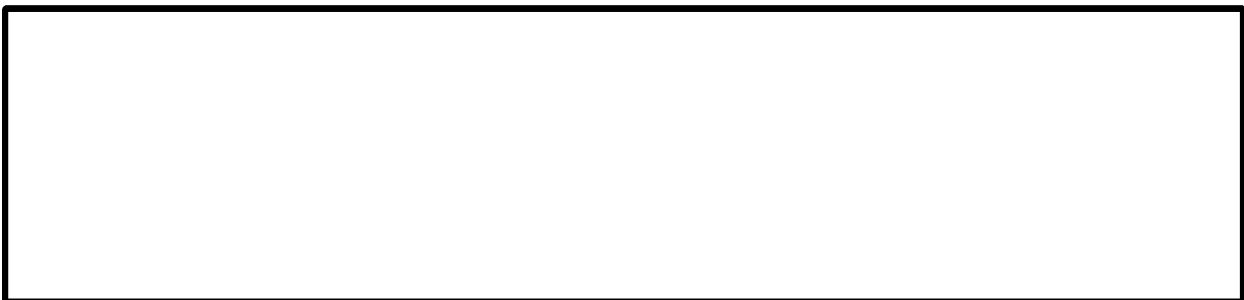
Craig M. Symons
Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. [REDACTED] | Cell [REDACTED]



(b)(5)

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From: Cissna, Francis
Sent: Friday, March 30, 2018 3:52 PM
To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans (b)(5)

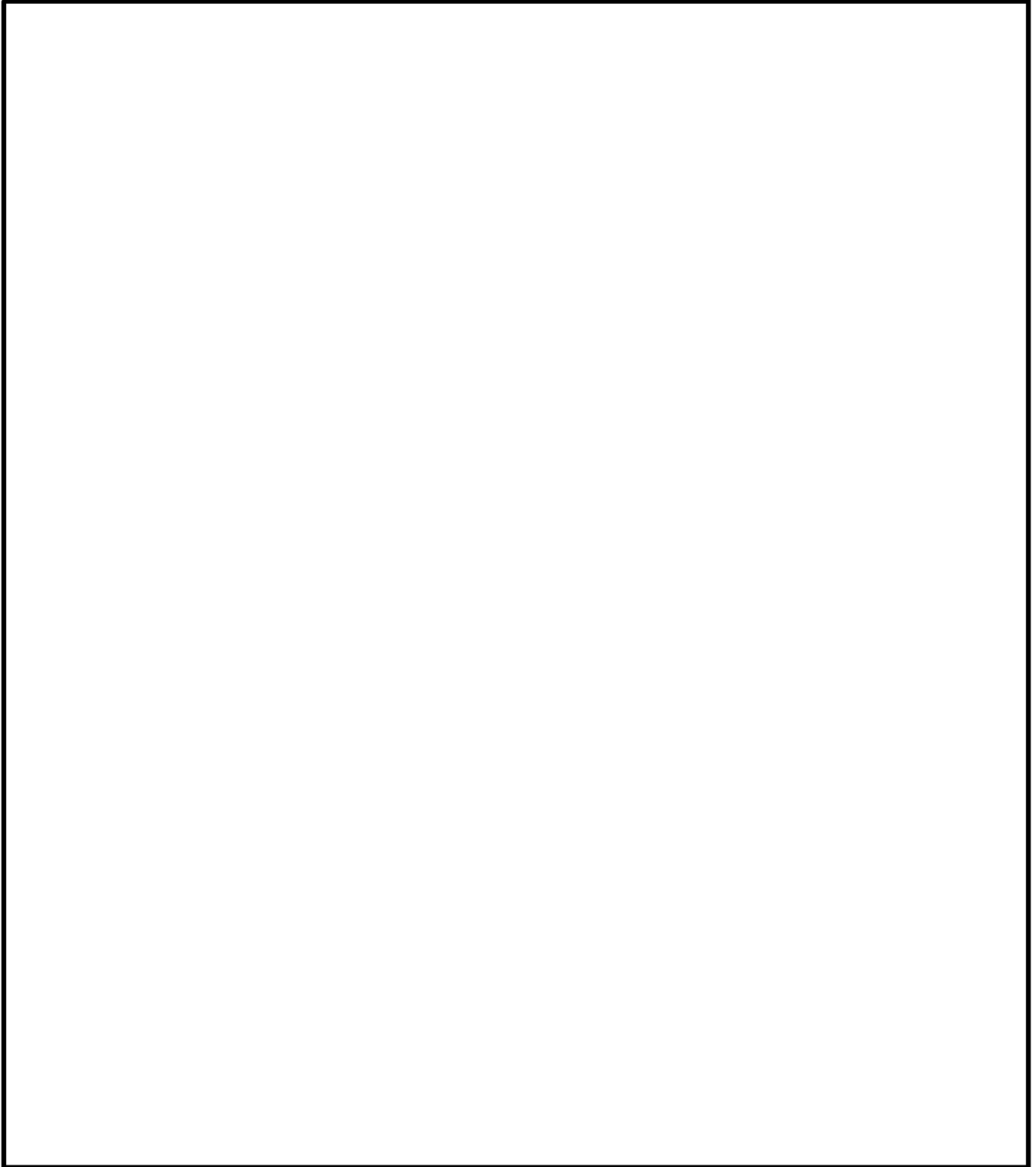


From: Stoddard, Kaitlin V

Sent: Friday, March 30, 2018 3:36 PM

To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T

Subject: RE: [EXTERNAL] Central Americans (b)(5)



From: Cissna, Francis

Sent: Friday, March 30, 2018 3:33 PM

To: Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T; Stoddard, Kaitlin V

Subject: RE: [EXTERNAL] Central Americans

Removing JZ and adding Kaitlin.

S1 is indeed aware. ICE and CBP too. Any reaction to this must, I think, come from DHS HQ, or at least be led by CBP. Unfortunately, as Jennifer Higgins has said, [REDACTED]

(b)(5)

Referred to another agency

From: Cissna, Francis <[REDACTED]>
Sent: Friday, March 30, 2018 3:24 PM (b)(5)
To: Zadrozny, John A. EOP/WHO <[REDACTED]>; Nuebel Kovarik, Kathy <[REDACTED]>; Symons, Craig M <[REDACTED]>; Law, Robert <[REDACTED]>
Subject: RE: [EXTERNAL] Central Americans

Yes, there is a 1,500+ person "refugee caravan" from Honduras, Guatemala, and El Salvador that is expected to reach the U.S. border at various California Ports of Entry in early April. (See article pasted below.) Here is video of the group crossing a Mexican border checkpoint on March 26: ><https://www.facebook.com/PuebloSF/videos/2106857236007633/><.

A 'Refugee Caravan' Is Headed to the U.S. and Getting Bigger Every Day



Image: Pueblo Sin Fronteras

An estimated 1,500 migrants from Honduras, Guatemala, and El Salvador started a month-long journey on Sunday to the United States, where they intend to seek political asylum. Organizers say the “refugee caravan” includes many women, unaccompanied minors, and entire families who are migrating through Mexico any way they can.

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“The turnout surprised all of us,” Rodrigo Abeja, a Mexico-based organizer with Pueblo Sin Fronteras, the immigrant rights group behind the caravan, told Splinter. Abeja said the group’s most recent caravans last year only had about 450 migrants. About 80% of

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The caravan comes just months after the Trump administration has called for a stricter vetting process for asylum seekers.

Abeja said the caravan has grown as migrants learn about the group as it journeys through Mexico.

So far, the critical mass of migrants marching through towns seems to be working. On Facebook, the group claimed the caravan is so large that Mexican immigration officials on Sunday abandoned a check point.

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Abeja said the number of people on this journey illustrates the desperation people have to stay alive.

"The journey is extreme. People say that if they stay where they are they'll die. So they're here because they're trying to stay alive," Abeja said.

The next stop for the group is in the town of Mapastepec, where, according to Pueblo Sin Fronteras, a local school has agreed to shelter the refugee caravan.

><https://splinternews.com/a-refugee-caravan-is-headed-to-the-u-s-and-getting-big-1824087413><

See also: ><https://www.telesurtv.net/english/news/Central-American-Migrants-in-Struggle-Caravan-Heads-to-Mexico-US-for-Dignity-Asylum-20180326-0006.html><

Referred to another agency

From: Marguerite Telford <[REDACTED]>
Sent: Friday, March 30, 2018 2:15 PM (b)(6)
To: Wold, Theo J. EOP/WHO <[REDACTED]>; Zadrozny, John A. EOP/WHO
[REDACTED]
Subject: [EXTERNAL] Central Americans

I have heard that the 1000-1500 Central Americans headed this way are being trained on what to say (credible fear) to be allowed entry. Who is funding this?

CBP and USCIS asylum officers will be the first contact. I am sure Cissna is on top of this . . . we are screening every single person? Obama would have waved them in!

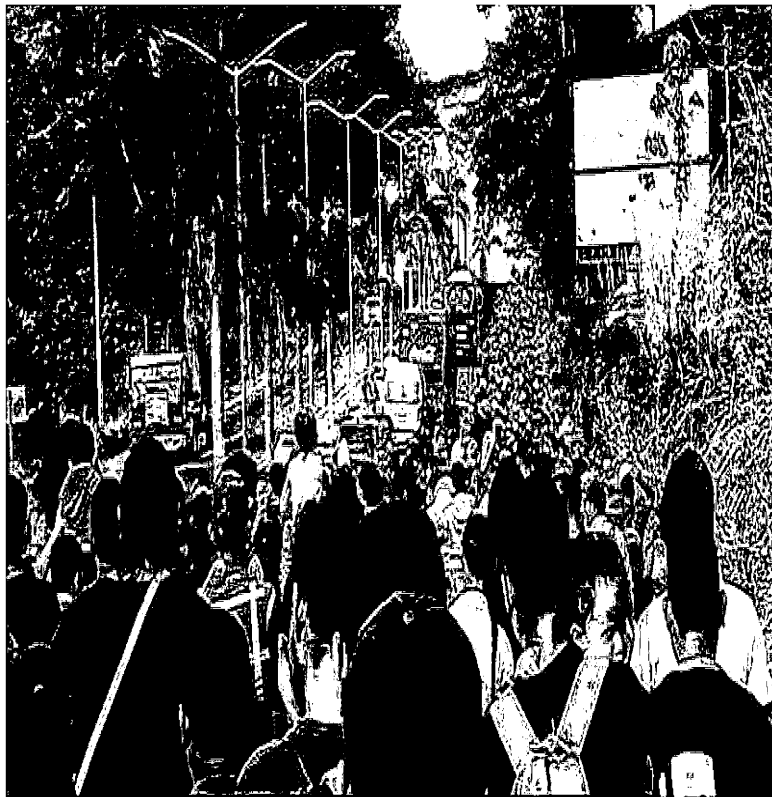
Mexico is just waving them through . . . has Mexico been given a heads-up to have a plan to take care of all of these folks since we won't be letting them in.

Media is giving it so little coverage . . . guess they want to increase odds they will make it to the border. We will try to get something out the door.

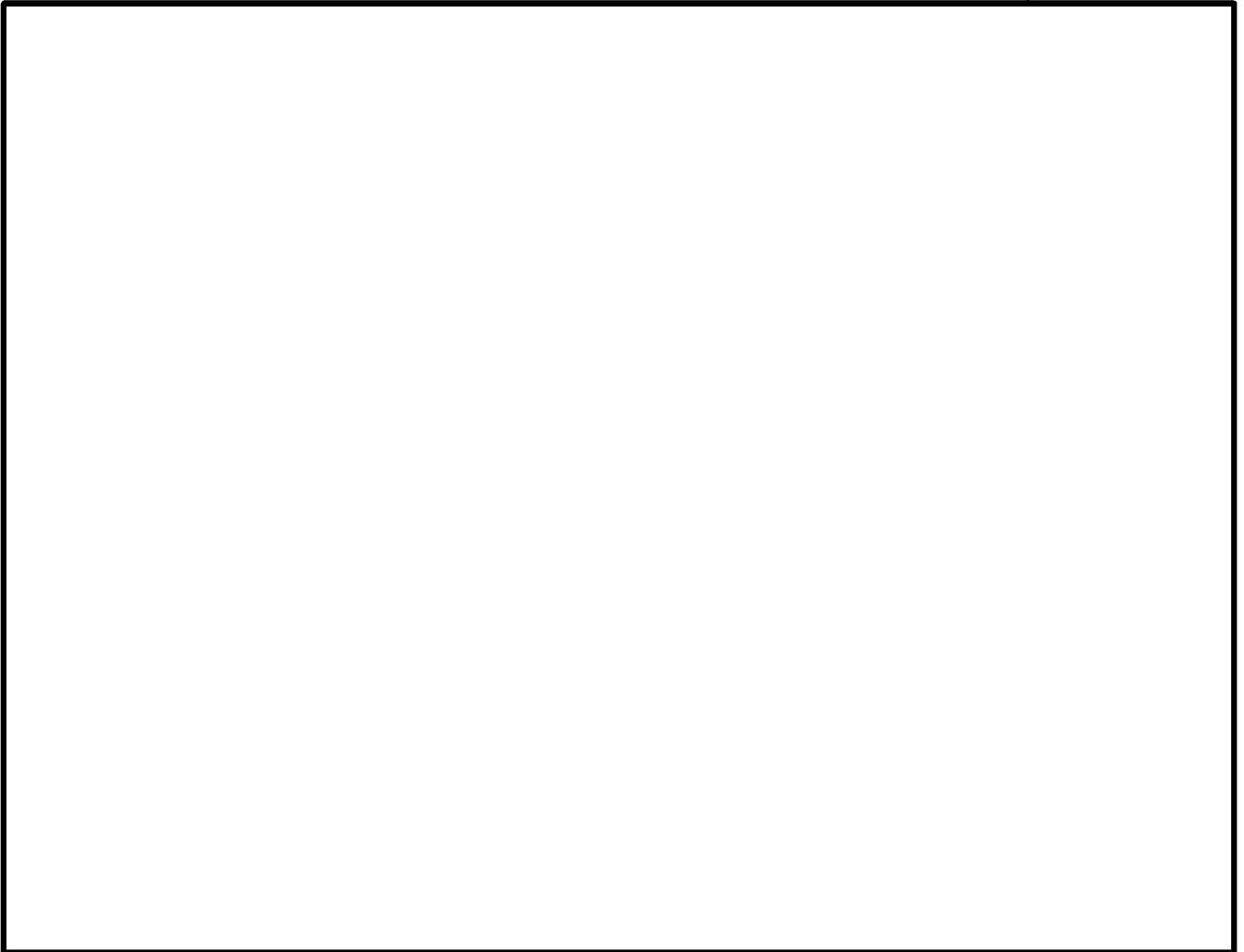
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Marguerite Telford
Director of Communications
Center for Immigration Studies

1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org >>www.cis.org<<



From: Cissna, Francis
Sent: Friday, March 30, 2018 3:50 PM
To: Symons, Craig M; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans
Attachments: Special Populations Presentation USCIS.PDF (b)(5)



From: Symons, Craig M
Sent: Friday, March 30, 2018 4:19 PM
To: Cissna, Francis; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans (b)(5)



Craig M. Symons
Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

(b)(6)

Tel. [REDACTED] | Cell [REDACTED]



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From: Cissna, Francis

Sent: Friday, March 30, 2018 3:52 PM

To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T

Subject: RE: [EXTERNAL] Central Americans

(b)(5)



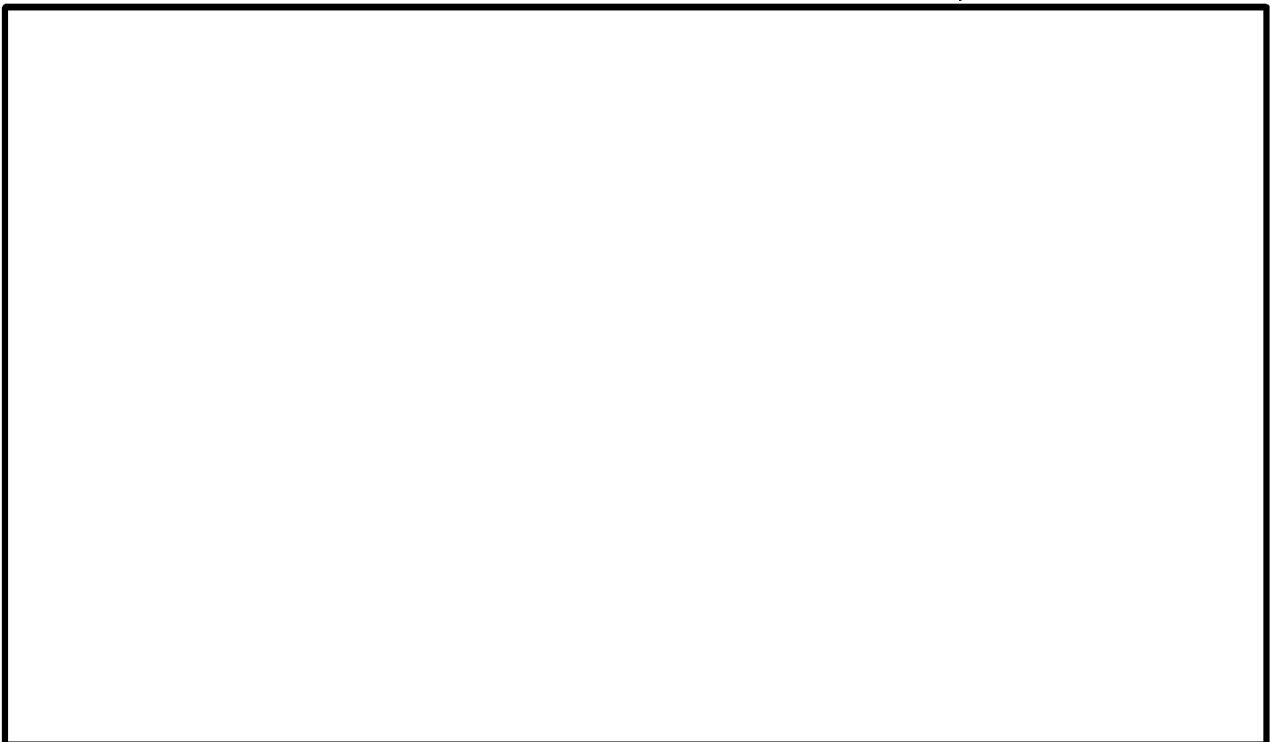
From: Stoddard, Kaitlin V

Sent: Friday, March 30, 2018 3:36 PM

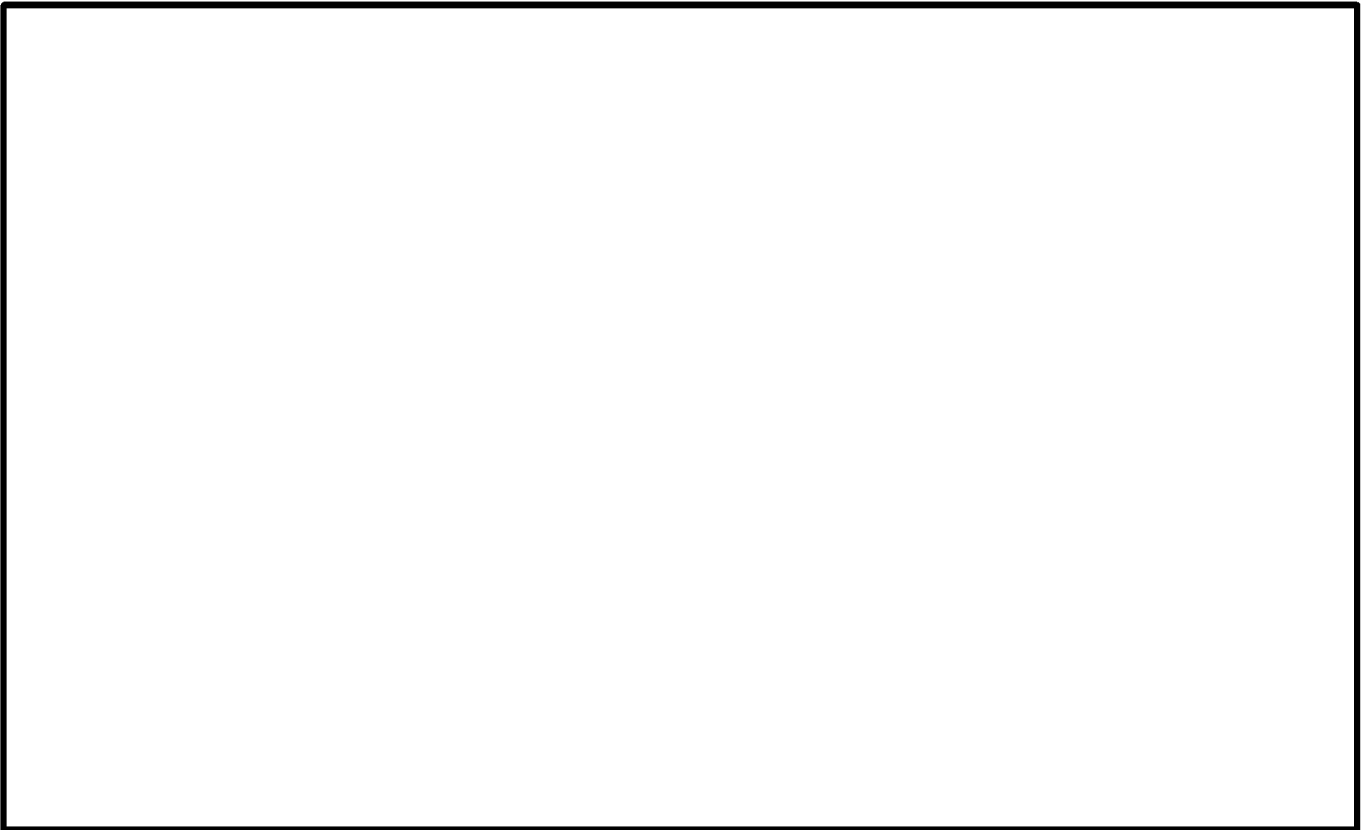
To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T

Subject: RE: [EXTERNAL] Central Americans

(b)(5)



(b)(5)



From: Cissna, Francis

Sent: Friday, March 30, 2018 3:33 PM

To: Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T; Stoddard, Kaitlin V

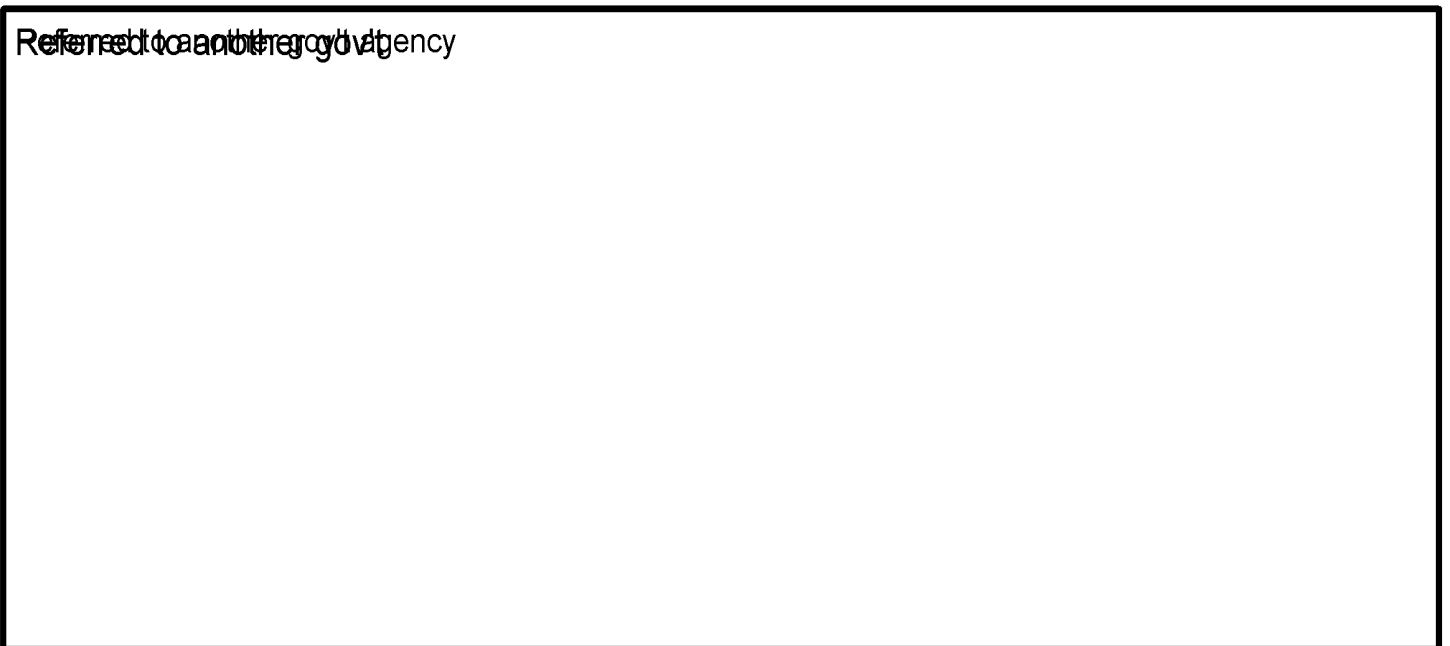
Subject: RE: [EXTERNAL] Central Americans

Removing JZ and adding Kaitlin.

(b)(5)



Referred to another agency



From: Cissna, Francis [REDACTED]
Sent: Friday, March 30, 2018 3:24 PM (b)(6)
To: Zadrozny, John A. EOP/WHO [REDACTED]; Nuebel Kovarik, Kathy
[REDACTED]; Symons, Craig M [REDACTED]; Law, Robert
T [REDACTED] (b)(6)
Subject: RE: [EXTERNAL] Central Americans

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A 'Refugee Caravan' Is Headed to the U.S. and Getting Bigger Every Day

Jorge Rivas
[3/26/18]



Image: Pueblo Sin Fronteras

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Those participating in the caravan will attend workshops to prepare them to request asylum when they reach the U.S. The migrants are expected to reach U.S. points of entries in California sometime next month.

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See also: ><https://www.telesurtv.net/english/news/Central-American-Migrants-in-Struggle-Caravan-Heads-to-Mexico-US-for-Dignity-Asylum-20180326-0006.html><

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Subject: [EXTERNAL] Central Americans

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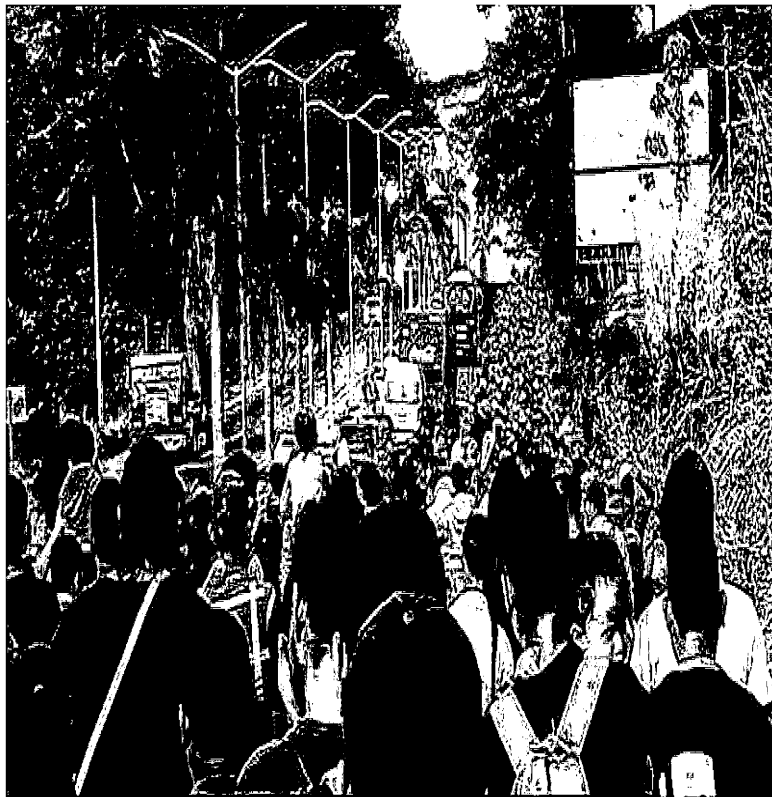
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Marguerite Telford
Director of Communications
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mrt@cis.org >>www.cis.org<<



Year	Approval Rate
FY 2009	6.3%
FY 2010	42.1%
FY 2011	38.1%
FY 2012	44.2%
FY 2013	35.0%
FY 2014	52.8%
FY 2015	41.2%
FY 2016	35.5%
FY 2017	34.7%
FY 2018 Q1	16.7%

From: Symons, Craig M
Sent: Friday, March 30, 2018 4:08 PM
To: Cissna, Francis; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

[Redacted]

(b)(5)

Craig M. Symons
Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. [Redacted] | Cell [Redacted]



(b)(6)

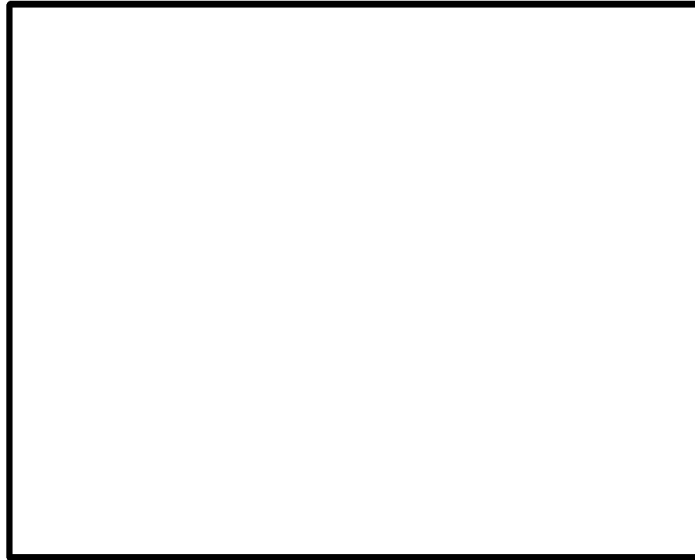
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From: Cissna, Francis
Sent: Friday, March 30, 2018 4:50 PM
To: Symons, Craig M; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

(b)(5)

[Redacted]

(b)(5)



From: Symons, Craig M
Sent: Friday, March 30, 2018 4:19 PM
To: Cissna, Francis; Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

(b)(5)



Craig M. Symons
Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. [REDACTED] | Cell [REDACTED]



(b)(5)

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From: Cissna, Francis
Sent: Friday, March 30, 2018 3:52 PM
To: Stoddard, Kaitlin V; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T
Subject: RE: [EXTERNAL] Central Americans

(b)(5)



(b)(5)



From: Stoddard, Kaitlin V

Sent: Friday, March 30, 2018 3:36 PM

To: Cissna, Francis; Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T

Subject: RE: [EXTERNAL] Central Americans



(b)(5)

From: Cissna, Francis

Sent: Friday, March 30, 2018 3:33 PM

To: Nuebel Kovarik, Kathy; Symons, Craig M; Law, Robert T; Stoddard, Kaitlin V

Subject: RE: [EXTERNAL] Central Americans

Removing JZ and adding Kaitlin.

(b)(5)



Referred to another agency

From: Cissna, Francis <[REDACTED]>

Sent: Friday, March 30, 2018 3:24 PM (b)(6)

To: Zadrozny, John A. EOP/WHO <[REDACTED]>; Nuebel Kovarik, Kathy

<[REDACTED]>; Symons, Craig M <[REDACTED]> Law, Robert

T <[REDACTED]> (b)(6)

Subject: RE: [EXTERNAL] Central Americans

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Jorge Rivas



Image: Pueblo Sin Fronteras

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“The journey is extreme. People say that if they stay where they are they’ll die. So they’re here because they’re trying to stay alive,” Abeja said.

The next stop for the group is in the town of Mapastepec, where, according to Pueblo Sin Fronteras, a local school has agreed to shelter the refugee caravan.

><https://splinternews.com/a-refugee-caravan-is-headed-to-the-u-s-and-getting-big-1824087413><

See also: ><https://www.telesurtv.net/english/news/Central-American-Migrants-in-Struggle-Caravan-Heads-to-Mexico-US-for-Dignity-Asylum-20180326-0006.html><

Referred to another agency

From: Marguerite Telford [REDACTED]

Sent: Friday, March 30, 2018 2:15 PM (b)(6)

To: Wold, Theo J. EOP/WHO [REDACTED]; Zadrozny, John A. EOP/WHO

[REDACTED]

Subject: [EXTERNAL] Central Americans

I have heard that the 1000-1500 Central Americans headed this way are being trained on what to say (credible fear) to be allowed entry. Who is funding this?

CBP and USCIS asylum officers will be the first contact. I am sure Cissna is on top of this . . . we are screening every single person? Obama would have waved them in!

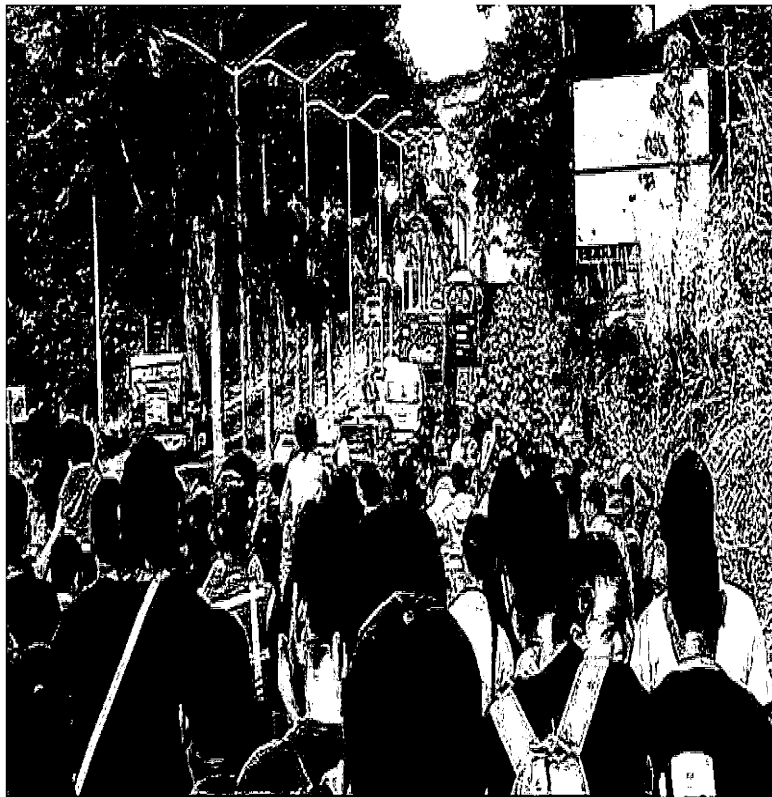
Mexico is just waving them through . . . has Mexico been given a heads-up to have a plan to take care of all of these folks since we won't be letting them in.

Media is giving it so little coverage . . . guess they want to increase odds they will make it to the border. We will try to get something out the door.

--

Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org >>www.cis.org<<

Year	Approval Rate
FY 2009	6.3%
FY 2010	42.1%
FY 2011	38.1%
FY 2012	44.2%
FY 2013	35.0%
FY 2014	52.8%
FY 2015	41.2%
FY 2016	35.5%
FY 2017	34.7%
FY 2018 Q1	16.7%



Referred to another agency

From: Cissna, Francis <[REDACTED]>
Sent: Friday, March 30, 2018 3:35 PM
To: Zadrozny, John A. EOP/WHO <[REDACTED]>; Nuebel Kovarik, Kathy <[REDACTED]>; Symons, Craig M <[REDACTED]>; Law, Robert <[REDACTED]>
Subject: RE: [EXTERNAL] Central Americans

I don't know, unfortunately.

Referred to another agency

From: Cissna, Francis <[REDACTED]>
Sent: Friday, March 30, 2018 3:29 PM
To: Zadrozny, John A. EOP/WHO <[REDACTED]>; Nuebel Kovarik, Kathy <[REDACTED]>; Symons, Craig M <[REDACTED]>; Law, Robert <[REDACTED]>
Subject: RE: [EXTERNAL] Central Americans

Secretary Nielsen is aware.

Referred to another agency

Referred to another agency

From: Cissna, Francis <[REDACTED]>
Sent: Friday, March 30, 2018 3:24 PM (b)(6)
To: Zadrozny, John A. EOP/WHO <[REDACTED]>; Nuebel Kovarik, Kathy
[REDACTED] Symons, Craig M <[REDACTED]>; Law, Robert
T [REDACTED]
Subject: RE: [EXTERNAL] Central Americans

Yes, there is a 1,500+ person "refugee caravan" from Honduras, Guatemala, and El Salvador that is expected to reach the U.S. border at various California Ports of Entry in early April. (See article pasted below.) Here is video of the group crossing a Mexican border checkpoint on March 26: >>><https://www.facebook.com/PuebloSF/videos/2106857236007633/><<<;.

A 'Refugee Caravan' Is Headed to the U.S. and Getting Bigger Every Day

Jorge Rivas
[3/26/18]



Image: Pueblo Sin Fronteras

An estimated 1,500 migrants from Honduras, Guatemala, and El Salvador started a month-long journey on Sunday to the United States, where they intend to seek political asylum. Organizers say the “refugee caravan” includes many women, unaccompanied minors, and entire families who are migrating through Mexico any way they can.

The migrants started their journey in Tapachula, Chiapas, near the Guatemala–Mexico border around 7 AM on Sunday. They walked, took public transportation, and hitchhiked their way to their first destination in the town of Huixtla, where many of the migrants camped outdoors. Their entire journey is more than 2,000 miles long.

“The turnout surprised all of us,” Rodrigo Abeja, a Mexico-based organizer with Pueblo Sin Fronteras, the immigrant rights group behind the caravan, told Splinter. Abeja said the group’s most recent caravans last year only had about 450 migrants. About 80% of the migrants in this latest caravan are from Honduras; Abeja speculated that the swelling numbers could be due to recent political instability in that country.

The caravan comes just months after the Trump administration has called for a stricter vetting process for asylum seekers.

Abeja said the caravan has grown as migrants learn about the group as it journeys through Mexico.

So far, the critical mass of migrants marching through towns seems to be working. On Facebook, the group claimed the caravan is so large that Mexican immigration officials on Sunday abandoned a check point.

Abeja said there are month-old infants being carried by young mothers alongside elders in their seventies who are making the journey. There's also a small contingent of people who identify as LGBTQ.

He said most migrants are escaping political persecution and gang violence.

Those participating in the caravan will attend workshops to prepare them to request asylum when they reach the U.S. The migrants are expected to reach U.S. points of entries in California sometime next month.

Abeja said the number of people on this journey illustrates the desperation people have to stay alive.

"The journey is extreme. People say that if they stay where they are they'll die. So they're here because they're trying to stay alive," Abeja said.

The next stop for the group is in the town of Mapastepec, where, according to Pueblo Sin Fronteras, a local school has agreed to shelter the refugee caravan.

>>>[<<<https://splinternews.com/a-refugee-caravan-is-headed-to-the-u-s-and-getting-big-1824087413](https://splinternews.com/a-refugee-caravan-is-headed-to-the-u-s-and-getting-big-1824087413)<<<;;

See also: >>><https://www.telesur.tv/english/news/Central-American-Migrants-in-Struggle-Caravan-Heads-to-Mexico-US-for-Dignity-Asylum-20180326-0006.html><<<;

Referred to another agency

From: Marguerite Telford [redacted]
Sent: Friday, March 30, 2018 2:15 PM (b)(6)
To: Wold, Theo J. EOP/WHO <[redacted]>; Zadrozny, John A. EOP/WHO
[redacted]
Subject: [EXTERNAL] Central Americans

I have heard that the 1000-1500 Central Americans headed this way are being trained on what to say (credible fear) to be allowed entry. Who is funding this?

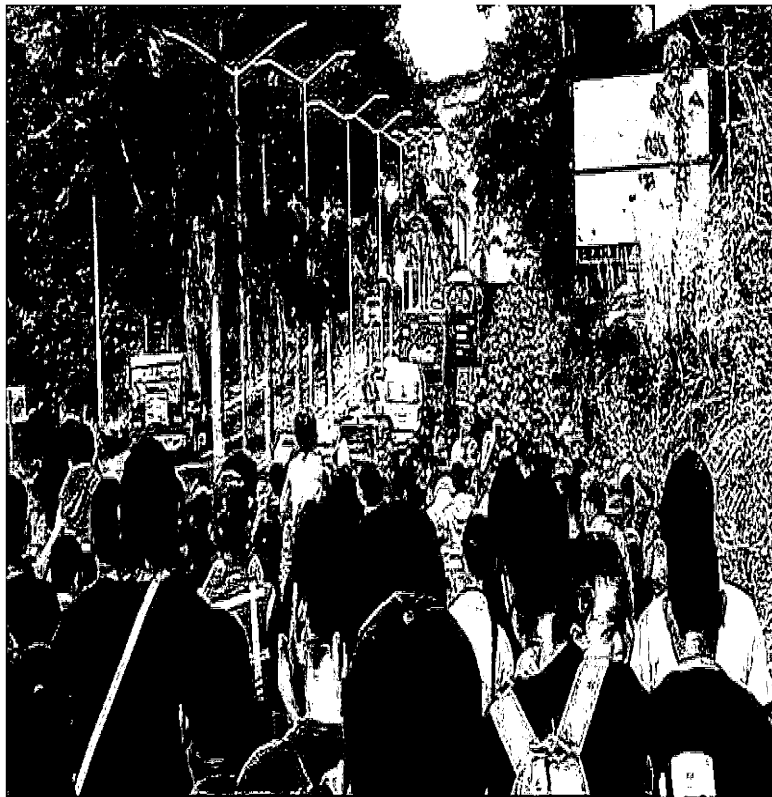
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Media is giving it so little coverage . . . guess they want to increase odds they will make it to the border. We will try to get something out the door.

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mrt@cis.org >>>>www.cis.org<<<<



From: Ries, Lora L
Sent: Thursday, August 09, 2018 4:24 PM
To: Cissna, Francis
Subject: FW: CIS event

F.,

Below are the steps CIS plans to take next Wed to secure the event as much as possible...

Lora Ries
Acting Associate Director, External Affairs
U.S. Citizenship and Immigration Services
Department of Homeland Security

(b)(6) [REDACTED] (c)

From: Jessica Vaughan [mailto:[REDACTED]] (b)(6)
Sent: Thursday, August 09, 2018 1:57 PM
To: Ries, Lora L; Bars, Michael J
Cc: mrt@cis.org
Subject: CIS event

Hi Lora,

I've spoken with my colleague, Marguerite Telford, who is the lead on organizing our Newsmaker events, about the security issues we talked about yesterday. Here are some of the answers to your questions:

1. The Press Club does have a "back entrance" that will be available to Francis, and Marguerite will send information on where to go.
2. The Press Club controls access to the 13th floor, where the event will be held, through the turnstiles, as we discussed. In order to better control who will be admitted as an attendee to our event, we are issuing a new invitation that requires attendees to RSVP, and upon doing so, if we approve, we will issue them a special code (different from the one provided earlier in our first invitation). This new invitation will be issued to a more limited group on our mailing list, more focused on credentialed journalists and organizations and individuals known to us.
3. To gain admission to the room where the event will be held, attendees will have to sign in and identify themselves to one of our staff. Attendees will be directed to seating areas that we decide on, with news media in the seats that are front and center in relation to the podium where Francis and I will be sitting.
4. In the event of a disturbance, our security guard and staff members will be ready to remove the individual. The seats are configured to facilitate this, with aisle spacing every 3-4 seats in a row, so that the security guard can get to them easily without climbing over a long row of other attendees. If someone raises their voice during the conversation, Francis and I will ignore them and keep talking. I am told that the microphones will not pick up the disrupter's voice very loudly, so it will not be very noticeable to anyone viewing the video stream.

5. Marguerite is checking on the availability of the Press Club dining room for us to meet beforehand. I suggest 8:30 am, if Francis' schedule permits. This is another way to avoid any protesters or other disturbances that might take place as people are walking in closer to the time of the event.

Does that cover everything? Please feel free to call or write if so. Regards, Jessica

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies



cell phone

(b)(6)

From: Bars, Michael J
Sent: Thursday, September 20, 2018 1:50 PM
To: Cissna, Francis; Ries, Lora L; Nuebel Kovarik, Kathy; Stoddard, Kaitlin V
Subject: FW: Cissna profile

From: Jessica Vaughan [REDACTED] (b)(6)
Sent: Thursday, September 20, 2018 2:39 PM
To: Bars, Michael J <michael.j.bars@uscis.dhs.gov>
Subject: FW: Cissna profile

fyi

From: Jessica Vaughan [REDACTED]
Sent: Thursday, September 20, 2018 2:37 PM (b)(6)
To: 'Ted Hesson' [REDACTED]
Subject: RE: Cissna profile

Let me count the ways you mischaracterized for a negative impression:

1. "So why is he making them so much harder for immigrants?" But none of the policy changes you described actually makes it "harder for immigrants."
2. "the establishment of a "denaturalization task force" that pledges to investigate immigration fraud and strip away citizenship in such cases—something that's historically been reserved for serious criminals or terrorists." You didn't mention that a) this started under the Obama administration and b) it applies only to a group of cases identified in an OIG audit involving people who obtained naturalization using an alias, and who had prior criminal convictions that may have disqualified them.
3. "a new memo that allows visa officers to deny applications without first requesting more evidence or notifying an applicant." This description implies that officers can arbitrarily deny applications without grounds. In fact, it applies only to a limited set of applications, in which the applicant has not provided the evidence required to support it. Among other scenarios that waste the government's time and prevent the timely adjudication of qualified applications, this will end the practice of filing skeletal applications that are filed just to buy time in the US, even when they know the application will not be approved. This rule benefits the legitimate applicants.
4. "a controversial proposed regulation that could prevent immigrants from obtaining green cards if they or their family members have used a public benefit, which is expected to include everything from food stamps to health insurance programs." The rule will prevent *applicants*, not immigrants (who have already been legally admitted), from obtaining green cards if they have been largely *dependent* on public welfare programs, or who might be. This has been the law since 1882. The language you use could scare non-citizens needlessly from applying for benefits they qualify for. It would be better for these non-citizens if reporters like you explained the proposal more truthfully.

5. "From his perch atop USCIS, he's issued a steady stream of policy changes and regulations that have transformed his agency into more of an enforcement body and less of a service provider." This is nonsense. It is completely false that now the majority of USCIS activity is "enforcement" rather than granting benefits.

6. "tightening and reworking regulations and guidance that make it harder to come to the U.S. as an immigrant or temporary worker." Again, baloney. Name one change that makes it "harder" to come as an immigrant? In fact the agency has made it easier through improvements like more e-filing. If you are a qualified, bonafide applicant you don't have a problem. They have made it harder for people trying to get benefits through fraudulent or marginally qualified applications. These are not affecting qualified prospective immigrants. As for the temporary workers, the reforms actually are focused mainly on employers who are abusing the system. These are the same employers who abuse temporary workers and bypass US workers.

7. "But the policy revisions could reshape legal immigration flows in the coming years, as visa applications that might have passed muster a few years ago are rejected." How can reforms aimed at reducing fraud "reshape legal immigration flows"? There is a lot of fraud, but it's not so much that we would run out of applicants if we caught all of it. Do you think that fraud should be allowed, just to maintain the current "shape" of legal immigration, whatever that means? Besides, the number of admissions in the family preference, employment, refugee and lottery categories are all set by Congress, and USCIS efforts to weed out fraudulent or unqualified applications does not affect the annual number admitted; there are such long waiting lists that there always will be another qualified applicant to take the slot, and most applicants are qualified. It's not fair for them to have to wait longer because ineligible applications are not screened out.

8. "And the changes made at USCIS, which have pushed visa officers toward the law enforcement space..." Actually it's Congress that gave USCIS adjudicators the authority to issue NTAs, not Cissna.

9. "but whose interpretations consistently trend in the direction of making life harder for people who want to come and stay in the United States." Again, what are you talking about? How have any of these changes made anyone's life harder, except for the unqualified and fraudulent applicants? And why would we want it to be easier for fraudsters to come here?

10. "and utterly fearsome to those suddenly caught in its net." Seriously? Can you give an example of someone caught in some kind of USCIS "net"?

11. "Cissna rewrote its mission statement, a symbolic move that alarmed some employees." Did you try to find out whether these alarmed employees were representative of most USCIS employees? Or if perhaps many USCIS employees welcomed this and other changes?

12. "a stream of policy changes at USCIS throughout the spring and summer that have made it more difficult for immigrants to enter the U.S. legally and stay once they've arrived." Again, none of the policy changes you mention make it more difficult for qualified, eligible immigrants to enter or stay.

13. "The updated guidance—the implementation of which has been postponed—orders officials to issue a "notice to appear" when a visa applicant is denied and lacks legal status." Why shouldn't we issue an NTA to failed benefits applicants who lack other legal status? Should we just ignore the fact that they are here illegally, and not initiate deportation proceedings? They will have a chance to make

their case to an immigration judge and might even win status, or they might be ordered removed, but they will get their due process. If the NTA were not issued, they probably would just stay here illegally. How is that better? And this is not a new policy – it was the policy for many years before it was changed well into the Obama administration. The hypothetical examples you give are purely speculative and unrealistic.

14. “removing second chances for some applicants.” You forgot to mention which applicants. The ones who didn’t provide the material required to prove their eligibility. Under US law, the burden is on the applicant to prove their eligibility, not on the government. If you show up at a DMV to apply for a license and forgot your identification and residency proof, do you think they would issue you a temporary license so you could have a second chance to show you qualify?

15. “A core provision of the regulation could block an immigrant from obtaining a green card if the person or a family member receives a wide range of public benefits, according to leaked drafts of the measure.” Again, the proposed rule is about dependency, not one-time use, and this is clear in the proposal, but you chose to leave the reader with a wrong impression, followed up with an unsubstantiated allegation of immigrants not buying formula for babies because of it. I believe that if that is happening, it is because of irresponsible reporting about the proposal, like yours, so I guess those starving babies are on you, not Cissna.

16. “Cissna’s appearance at an event thrown by CIS, a group has been labeled a hate group by the Southern Poverty Law Center, triggered a political uproar,” Somehow I missed this uproar, and I was there. What did it consist of?

17. “Bobbing awkwardly and fidgeting with his hands,” C’mon, really? And you forgot to tell us whether you liked his tie. jv

From: Ted Hesson <[REDACTED]>
Sent: Thursday, September 20, 2018 12:10 PM (b)(6)
To: Jessica Vaughan <[REDACTED]>
Subject: Re: Cissna profile

What sounds evil to you?

From: Jessica Vaughan <[REDACTED]>
Date: Thursday, September 20, 2018 at 11:46 AM
To: Ted Hesson <[REDACTED]> (b)(6)
Subject: RE: Cissna profile

That’s quite the litany of mischaracterizations of policies. You don’t even need the scary music for people know how much you want them to think Francis is evil. jv

From: Ted Hesson <[REDACTED]>
Sent: Thursday, September 20, 2018 9:13 AM (b)(6)
To: Jessica Vaughan <[REDACTED]>
Subject: Cissna profile

Hi Jessica,

Here's a link to the profile. Thanks for taking the time to chat with me.

<https://www.politico.com/magazine/story/2018/09/20/uscis-director-lee-francis-cissna-profile-220141>

--

Ted Hesson
Employment and Immigration Reporter
POLITICO Pro

[REDACTED] (w) | [REDACTED] (c)
[REDACTED]

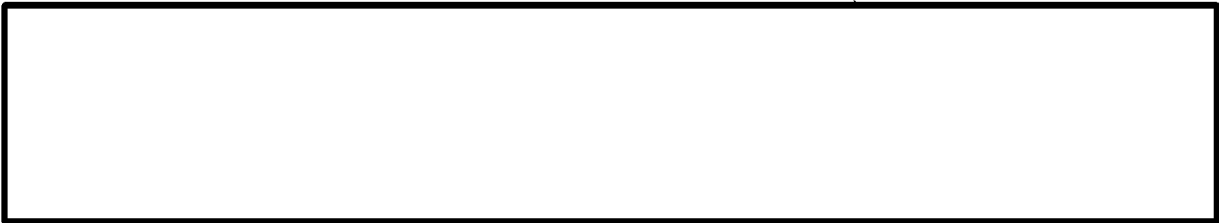
(b)(6)

From: Rellis, Jennifer L
Sent: Wednesday, November 21, 2018 3:29 PM
To: Higgins, Jennifer B; Kim, Ted H; Lafferty, John L; Mura, Elizabeth E
Cc: Prelogar, Brandon B; Nuebel Kovarik, Kathy; Anderson, Kathryn E
Subject: FW: For Review by 5pm- FW: Agreement w/ Mexico
Attachments: What is Need from Mexico to Implement Remain in Mexico ver 2.docx

Importance: High

FYI – and I’m including OPS as well.

(b)(5)



If you’d like me to add this comment and/or anything else, let me know before 5.

Thanks,
Jennifer

Referred to US Customs and Border Protection

(b)(6)

(b)(6)

(b)(6)

Referred to US Customs and Border Protection

Referred to Department of Homeland Security

From: Rellis, Jennifer L
Sent: Wednesday, November 21, 2018 4:07 PM
To: PETERLIN, MEGHANN K; HAYES, BRADLEY F
Cc: Mura, Elizabeth E; Lafferty, John L; Higgins, Jennifer B; Kim, Ted H
Subject: RE: For Review by 5pm- FW: Agreement w/ Mexico

USCIS has no comment.

Thanks,
Jennifer

Referred to US Customs and Border Protection

(b)(6)

(b)(6)

(b)(6)

Referred to Department of Homeland Security

(b)(6)

(b)(6)

(b)(6)

Referred to US Customs and Border Protection

Referred to Department of Homeland Security

From: Rellis, Jennifer L
Sent: Wednesday, November 21, 2018 4:54 PM
To: Hussey, Jedidah M; Daum, Robert L; Gadson, Irvin C; Hemming, Bryan D; Douglas, Audrey M
Cc: Lafferty, John L; Higgins, Jennifer B; Kim, Ted H; Mura, Elizabeth E
Subject: FW: Updated RIM draft - v9
Attachments: RIM DRAFT v9.doc

Latest RIM draft.

Referred to US Customs and Border Protection

(b)(6)

(b)(6)

From: Rellis, Jennifer L
Sent: Wednesday, November 21, 2018 5:49 PM
To: Lafferty, John L; Kim, Ted H; Higgins, Jennifer B; Mura, Elizabeth E
Subject: FW: Updated RIM draft - v9
Attachments: RIM DRAFT v9.doc

Importance: High

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Referred to US Customs and Border Protection

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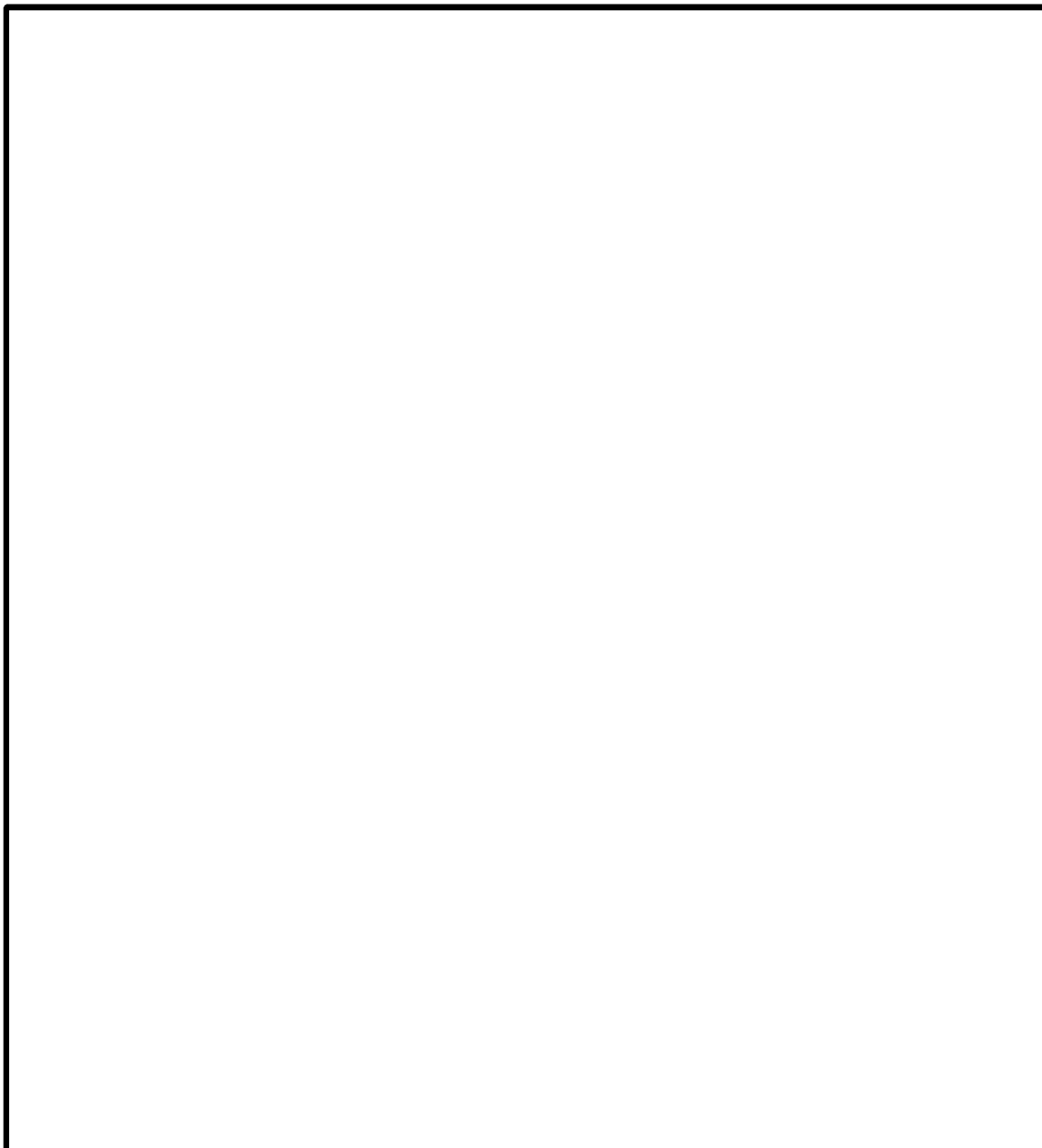
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**INA Section 235(b)(2)(C)
“Remain in Mexico”
California Pilot Notional Process**

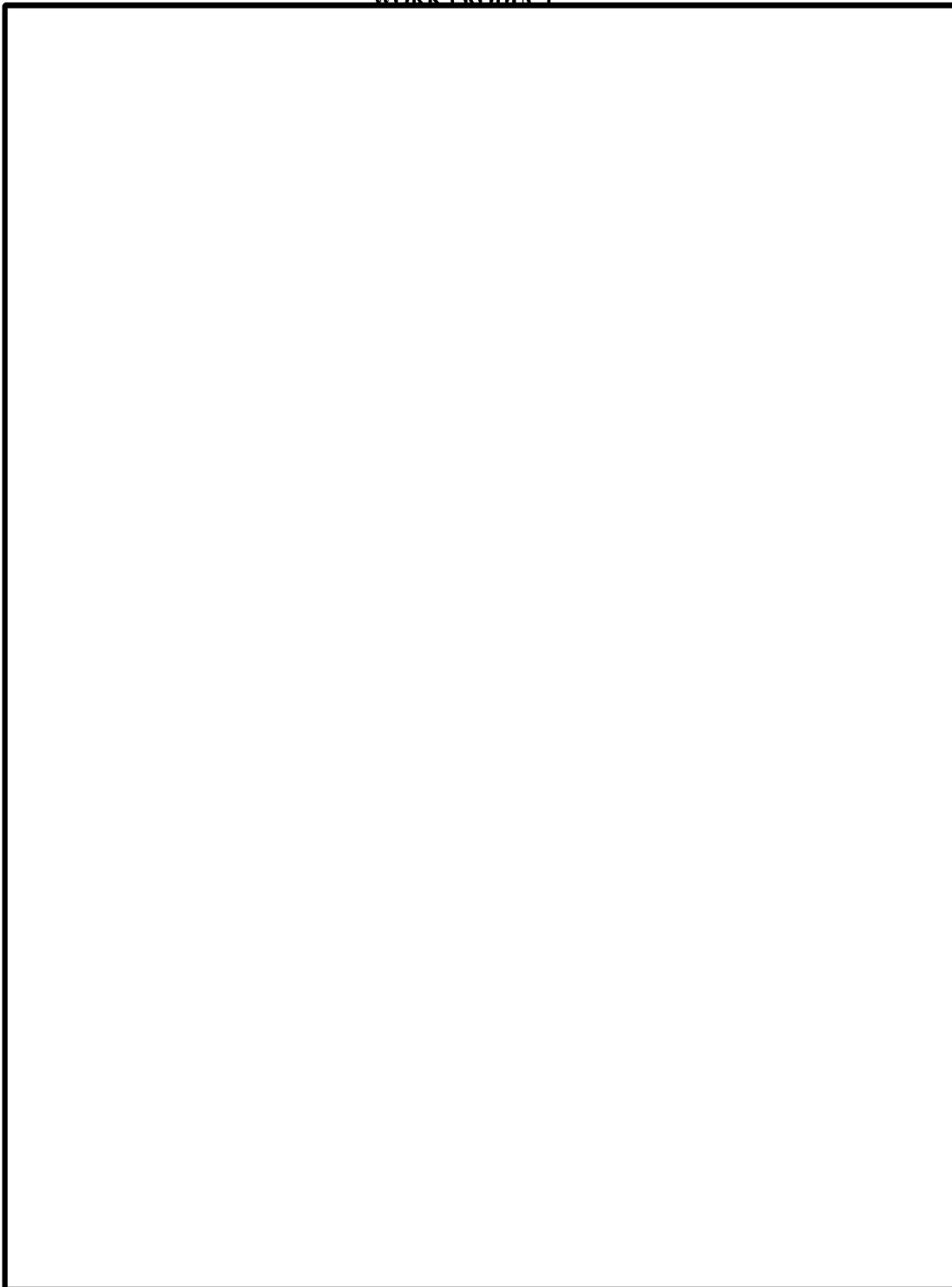
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For Discussion Purposes ONLY At This Time



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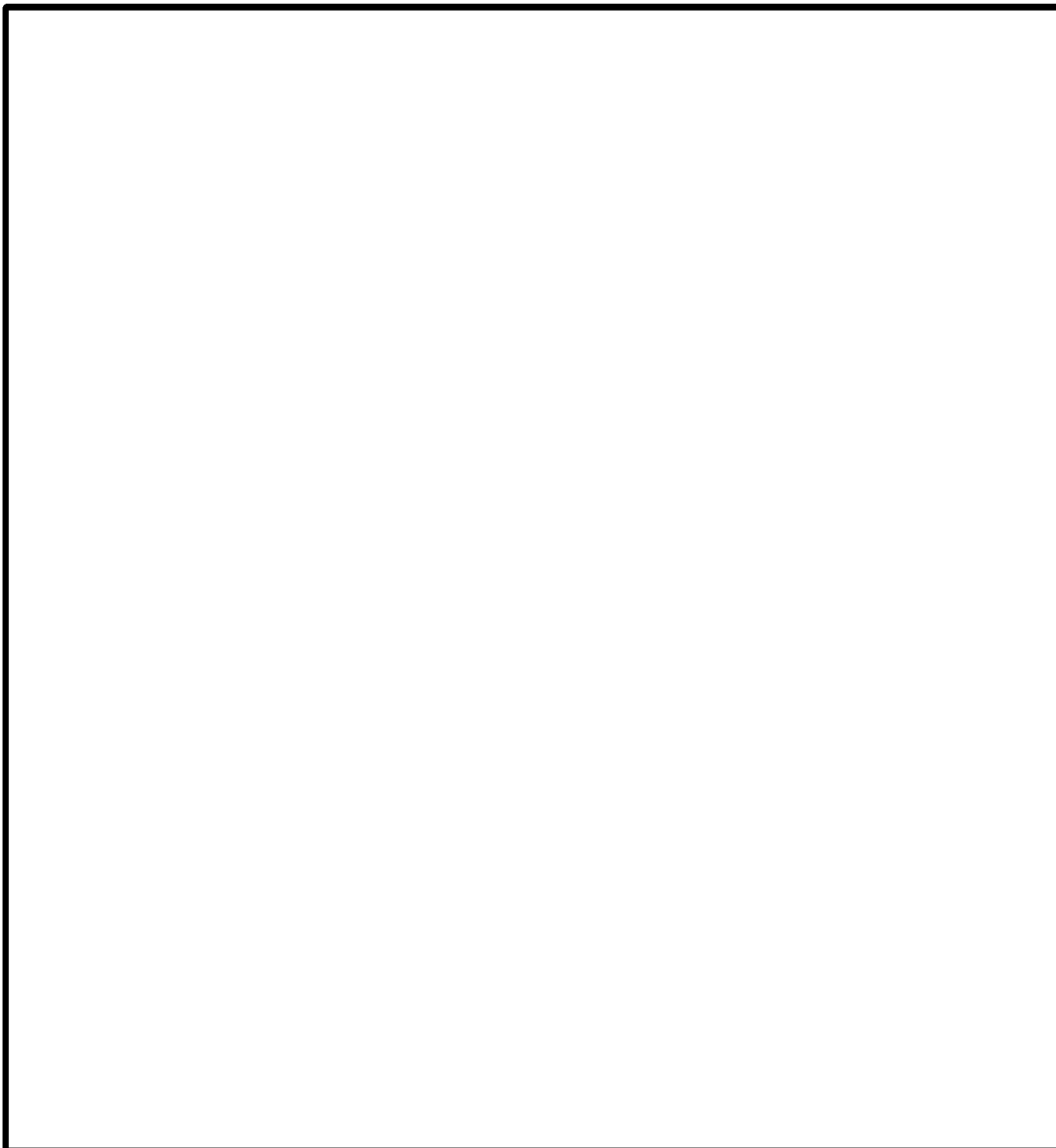
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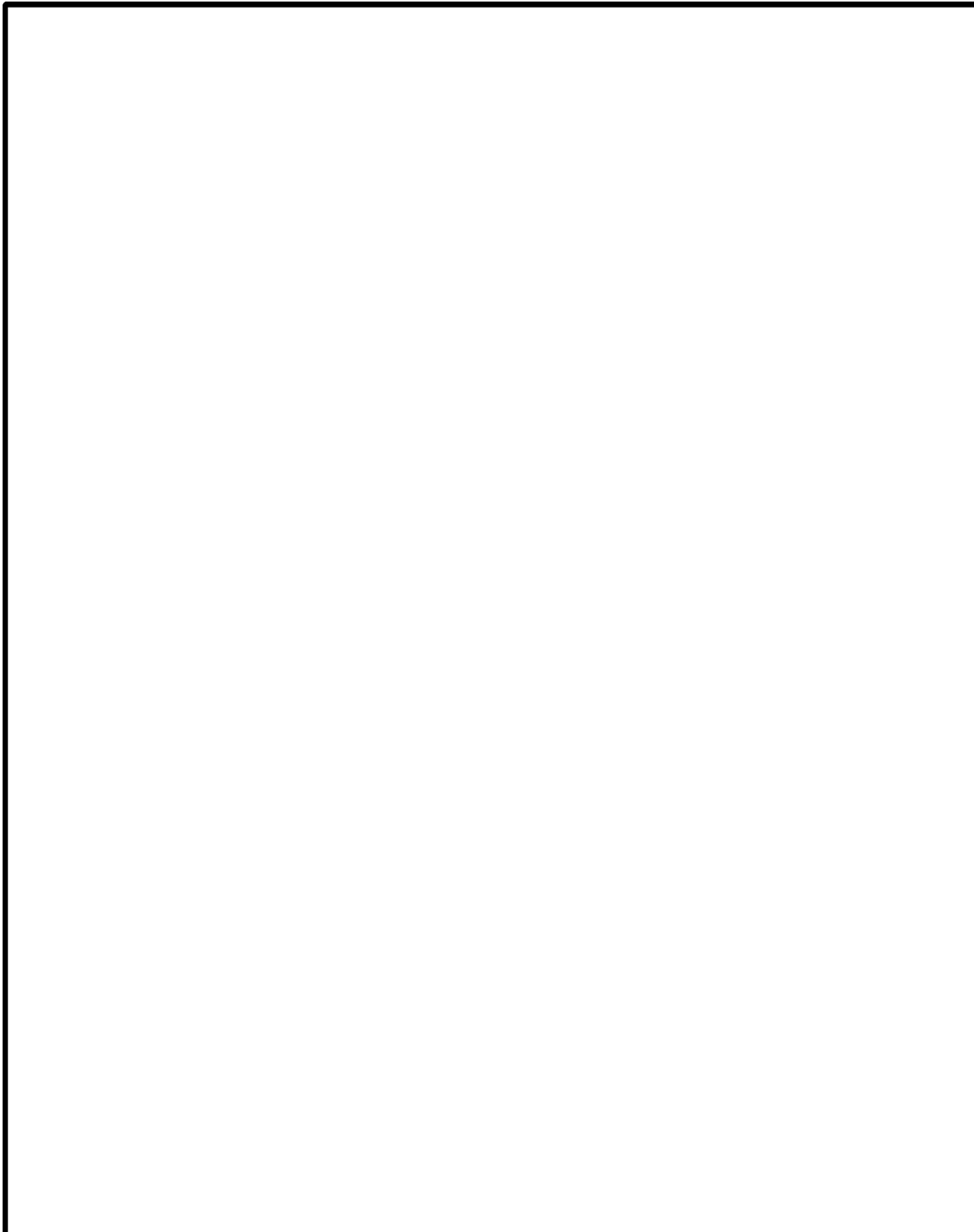
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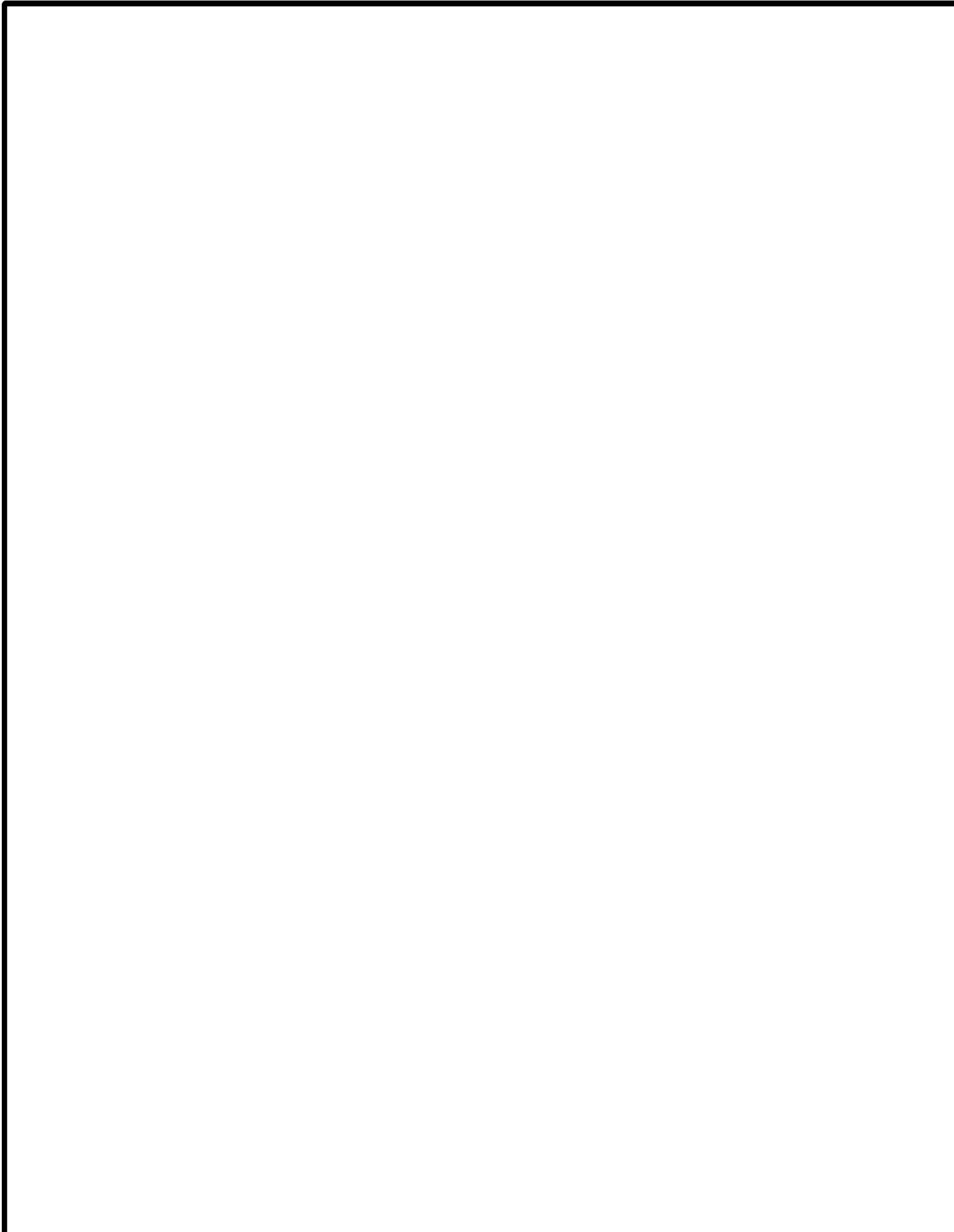
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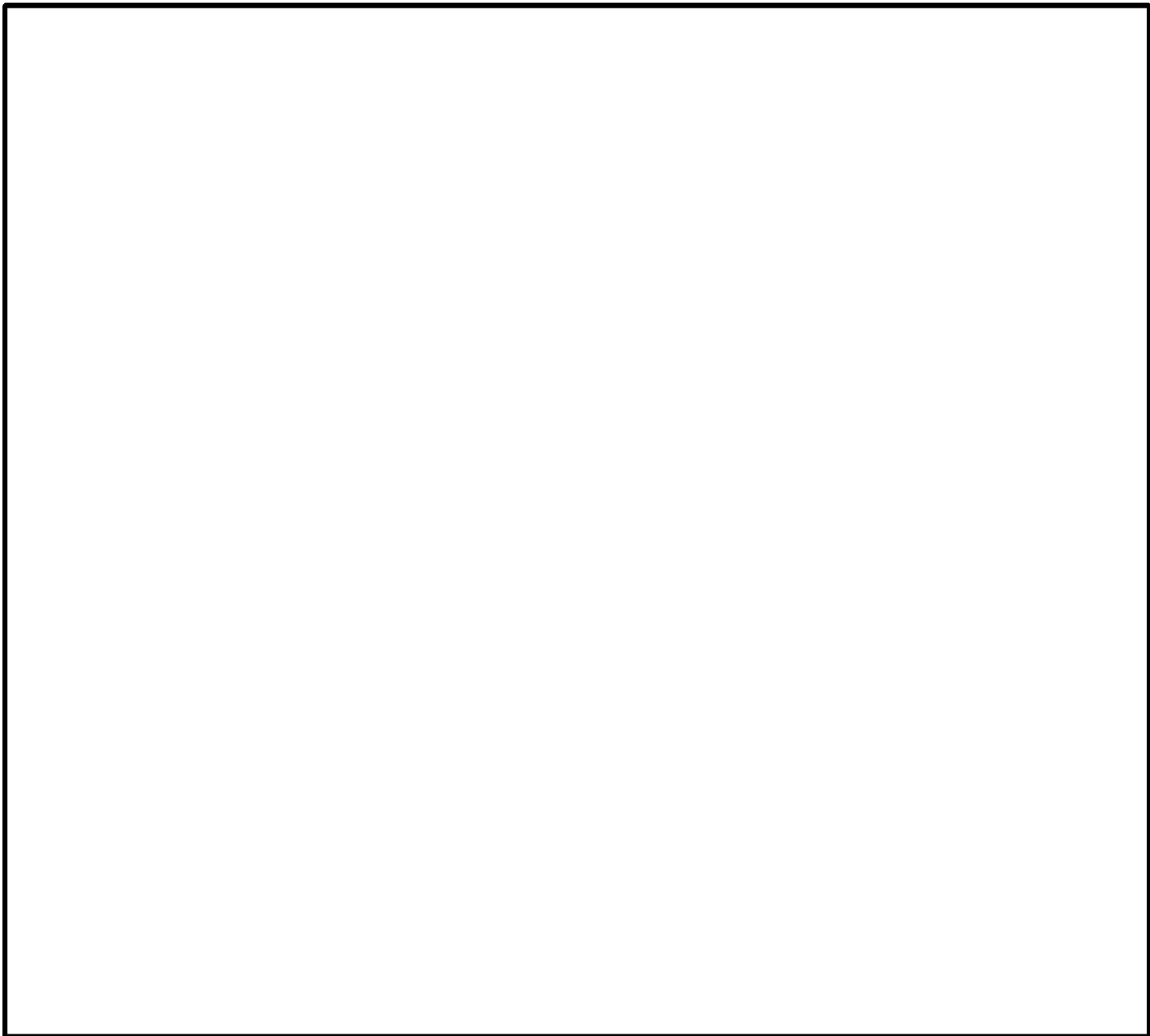
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OPERATIONAL/TACTICAL DISCUSSION POINTS

(b)(5)



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(b)(6)

From: Higgins, Jennifer B
Sent: Wednesday, November 21, 2018 6:23 PM
To: PETERLIN, MEGHANN K
Subject: Re: Updated RIM draft - v9

Ok. I wish I knew why. This isn't going to work as well for CBP or us but if that's the decision, ok.

Sent from my iPhone

Referred to US Customs and Border Protection

From: Higgins, Jennifer B
Sent: Wednesday, November 21, 2018 6:53 PM
To: PETERLIN, MEGHANN K <[REDACTED]> (b)(6)
Subject: Re: Updated RIM draft - v9

Can you make sure it has the presumption built in rather than CBP proactively asking the two questions?

Sent from my iPhone

Referred to US Customs and Border Protection

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(b)(6)

From: Higgins, Jennifer B
Sent: Wednesday, November 21, 2018 6:24 PM
To: Rellis, Jennifer L
Cc: Lafferty, John L; Kim, Ted H; Mura, Elizabeth E
Subject: Re: Updated RIM draft - v9

[Redacted]

(b)(5)

Sent from my iPhone

(b)(5)

On Nov 21, 2018, at 6:51 PM, Higgins, Jennifer B <[Redacted]> wrote:

[Redacted]

(b)(5)

Sent from my iPhone

(b)(5)

On Nov 21, 2018, at 6:49 PM, Rellis, Jennifer L <[Redacted]> wrote:

[Redacted]

(b)(5)

Referred to US Customs and Border Protection

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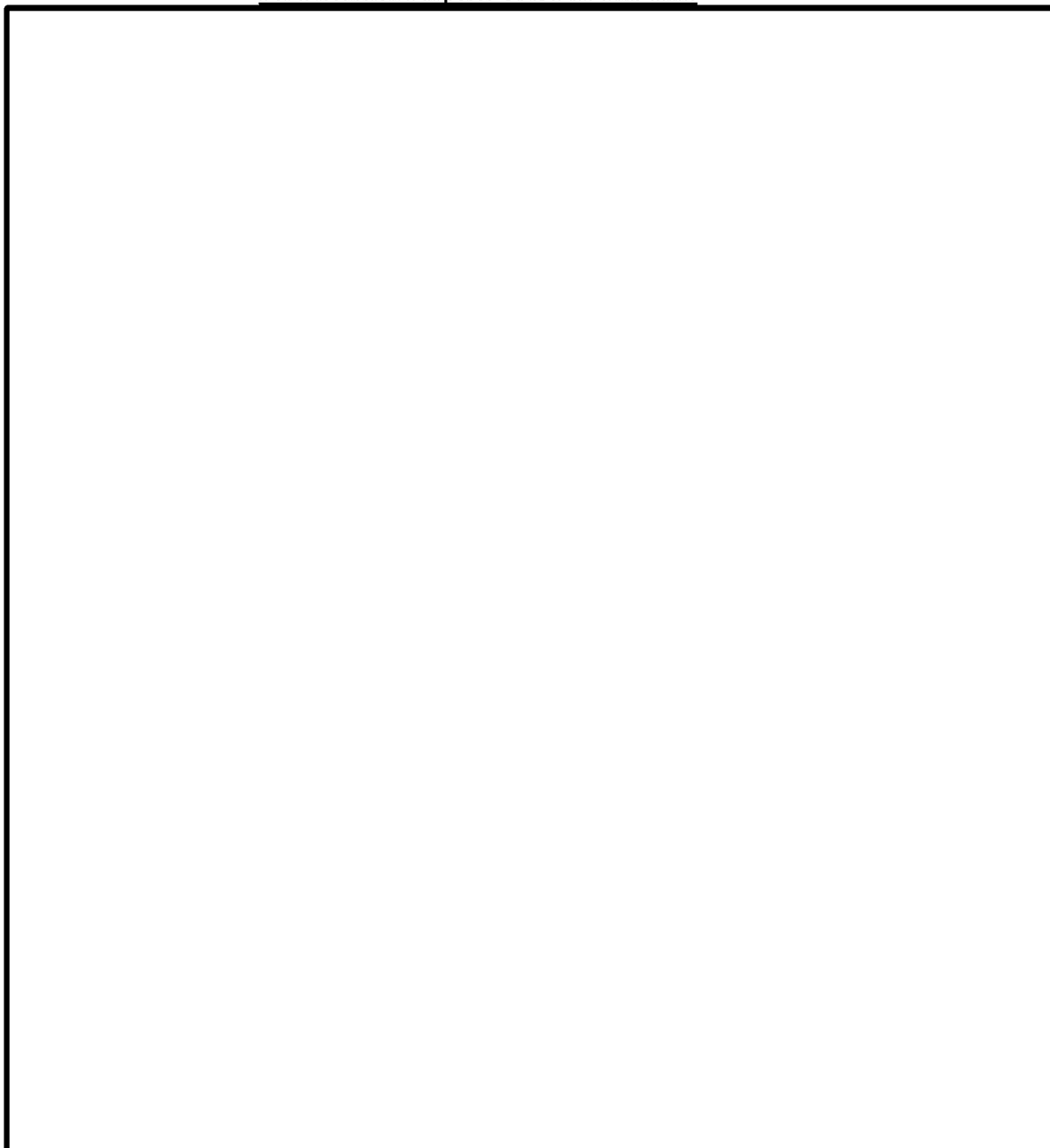
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**INA Section 235(b)(2)(C)
“Remain in Mexico”
California Pilot Notional Process**

For Discussion Purposes ONLY At This Time



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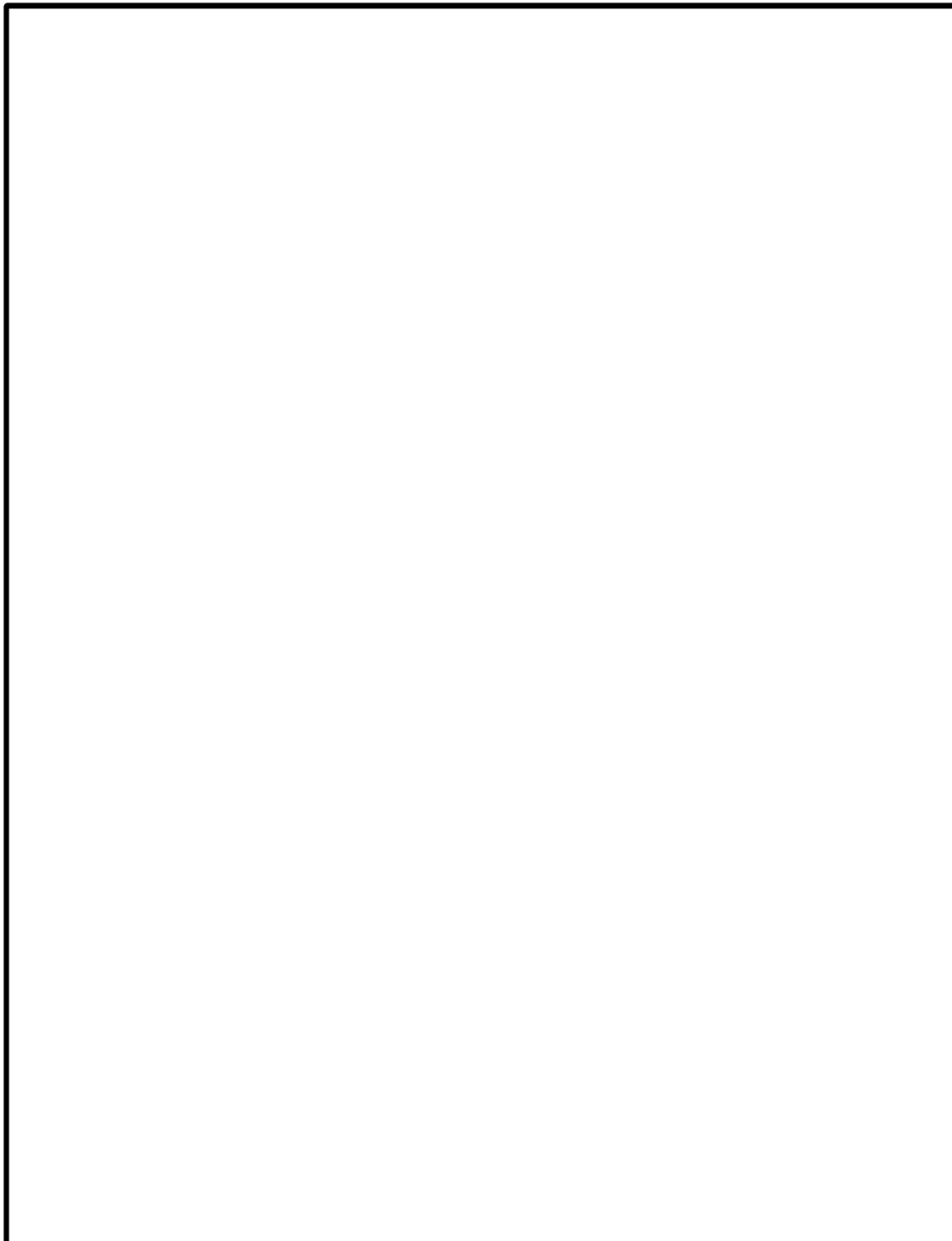
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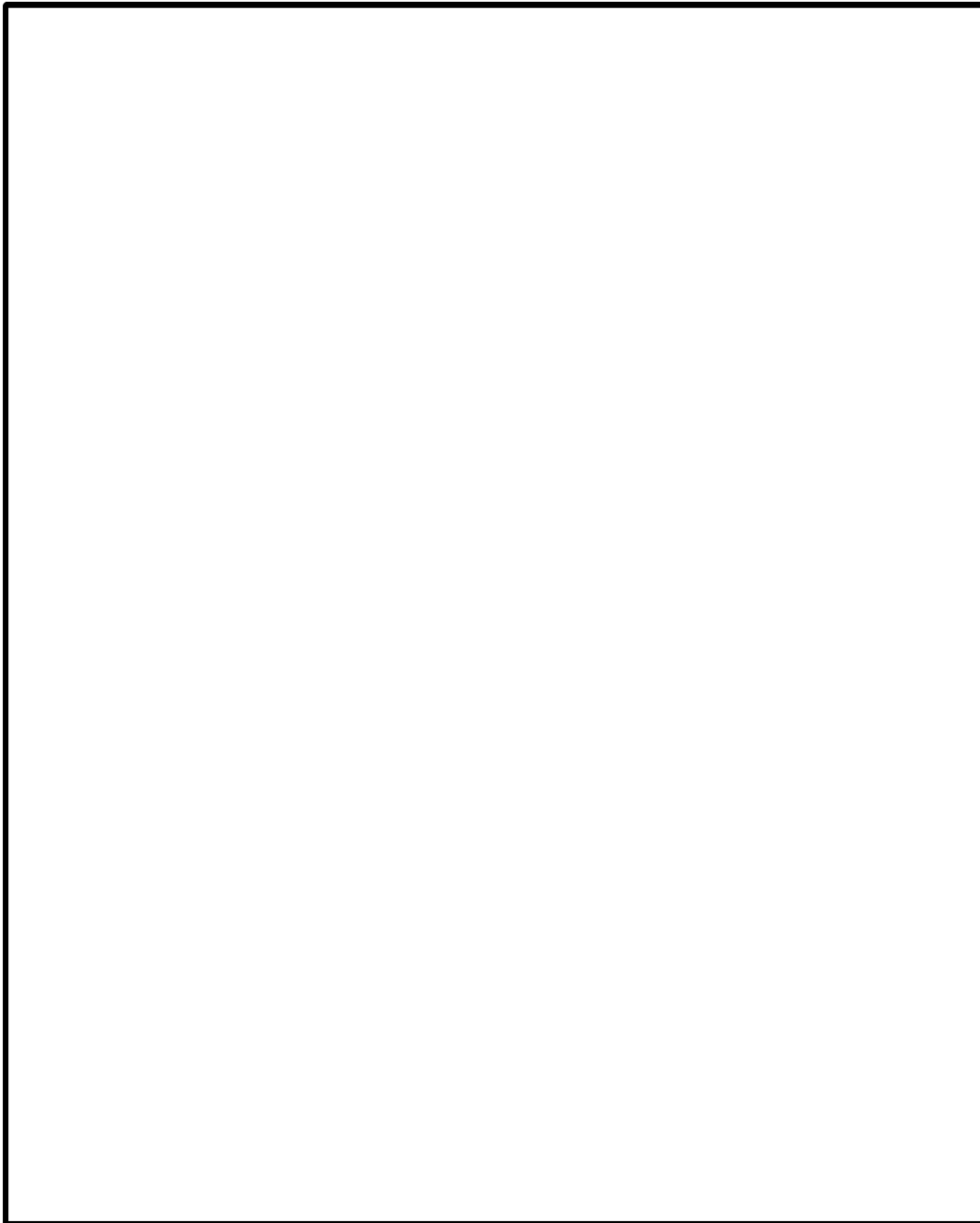
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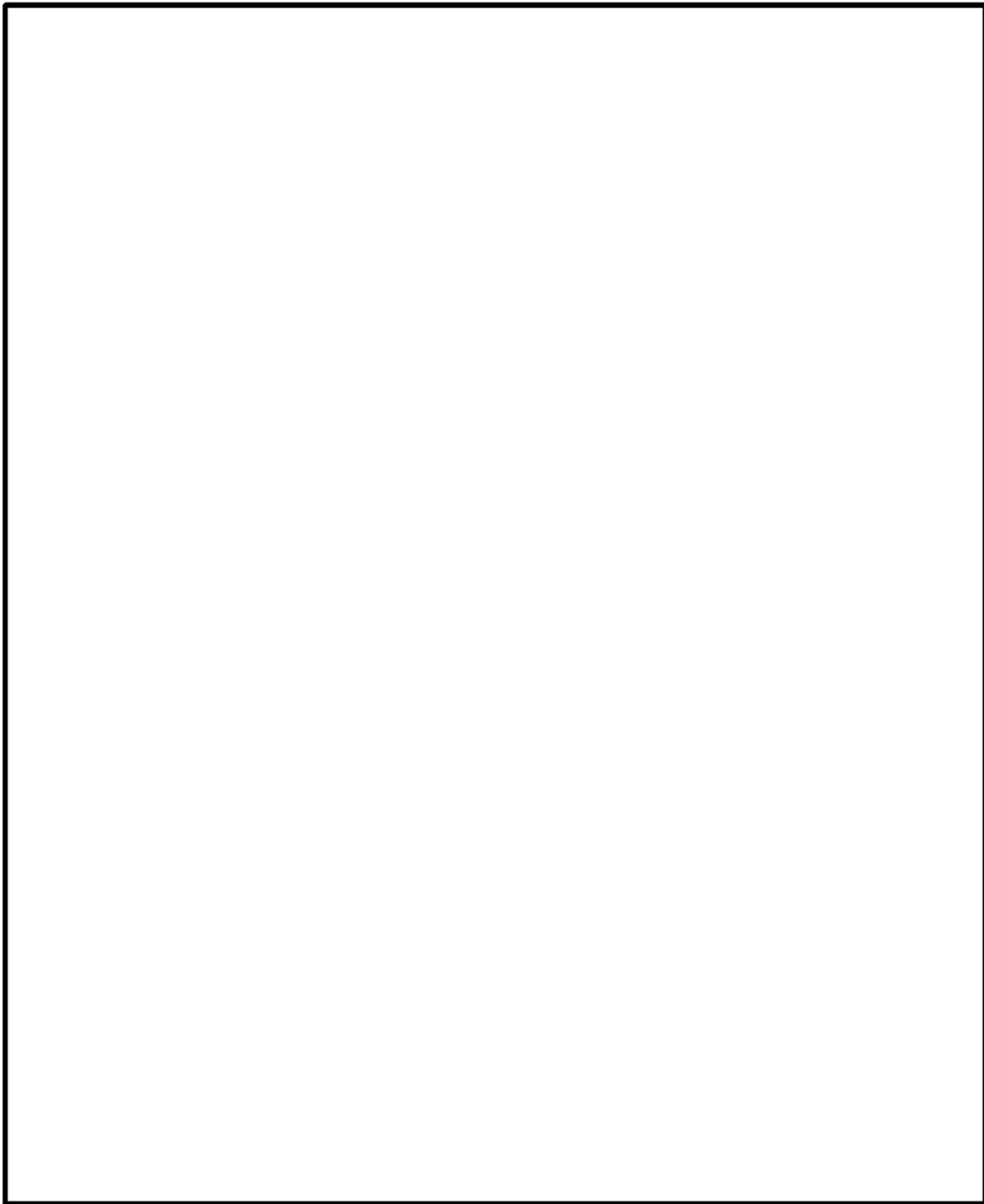
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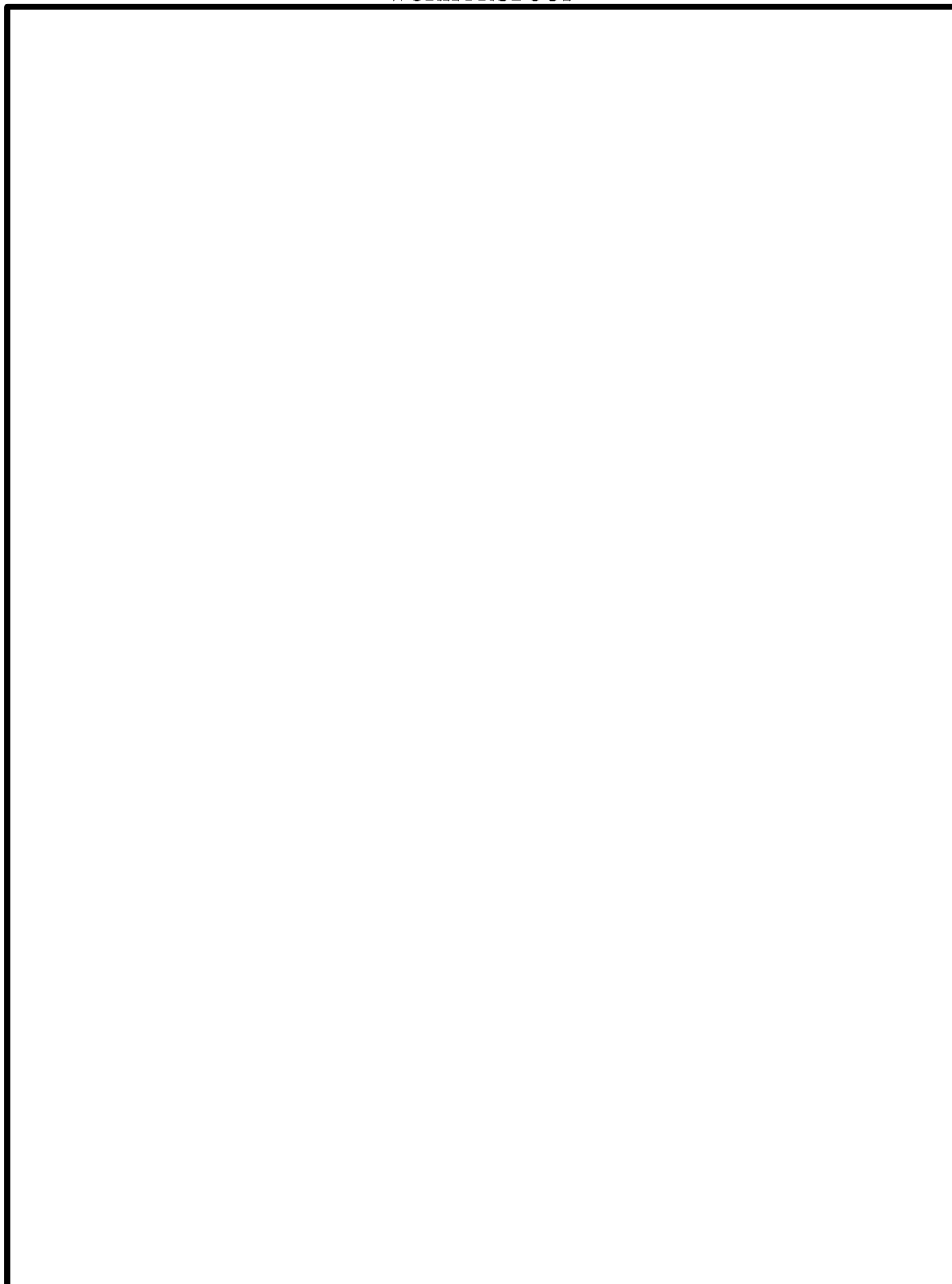
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From: Higgins, Jennifer B
Sent: Thursday, November 22, 2018 9:51 AM
To: Waldman, Katie
Subject: RE: RIM Myth Fact
Attachments: RIM Myth Fact.4 USCIS.docx

Here you go! Sorry to send you two different versions.....

From: Waldman, Katie
Sent: Thursday, November 22, 2018 10:27 AM
To: Higgins, Jennifer B
Subject: Fwd: RIM Myth Fact

Happy Thanksgiving! I have these already too.

From: Jacobs, Elizabeth A <[REDACTED]> (b)(6)
Sent: Thursday, November 22, 2018 10:01 AM
To: Waldman, Katie
Subject: RE: RIM Myth Fact

Good morning,

Attached, please find my edits/comments. Please let me know if you have any questions.

Thank you and happy Thanksgiving!

Liz

Elizabeth Jacobs

Senior Advisor | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

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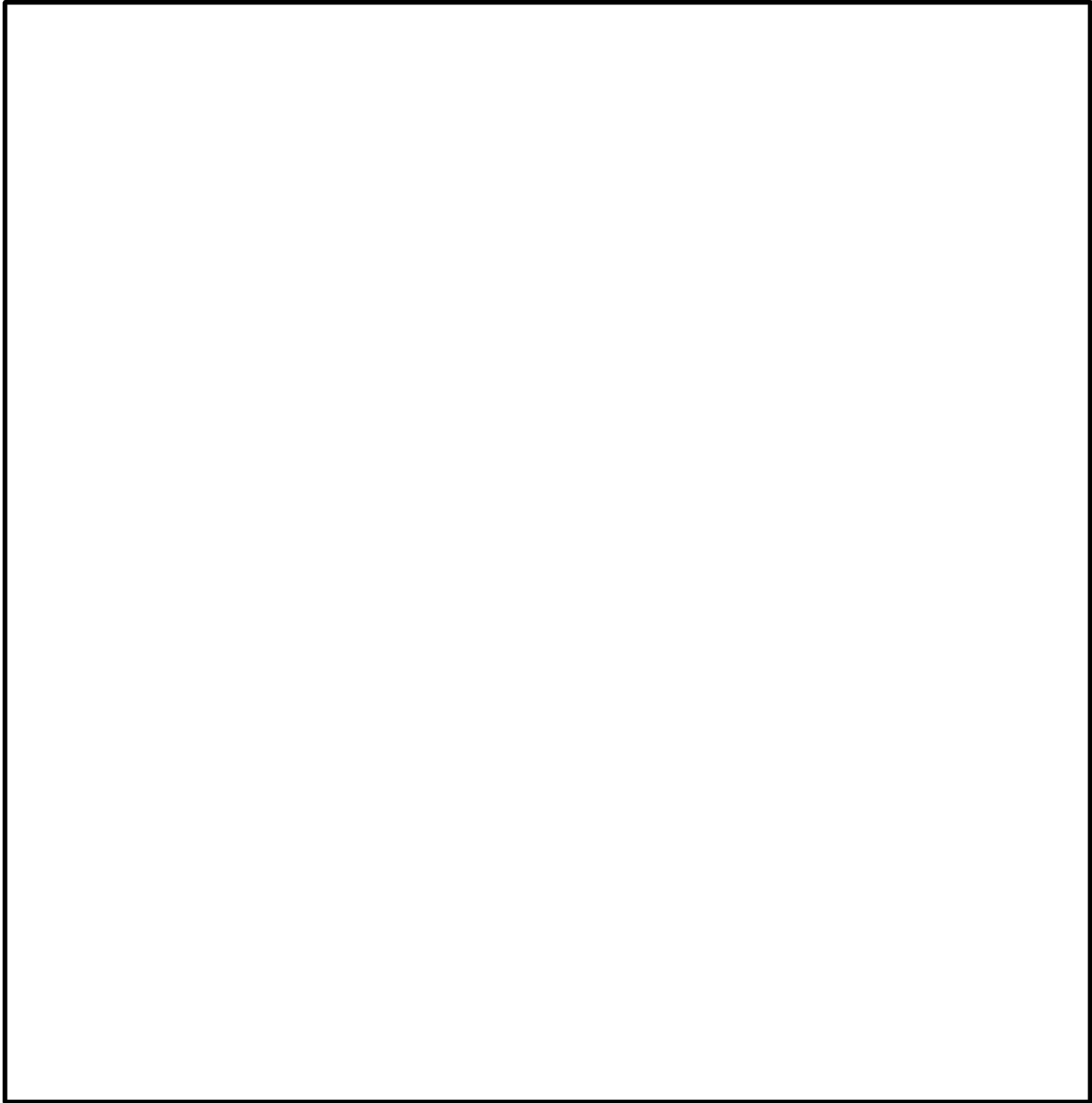
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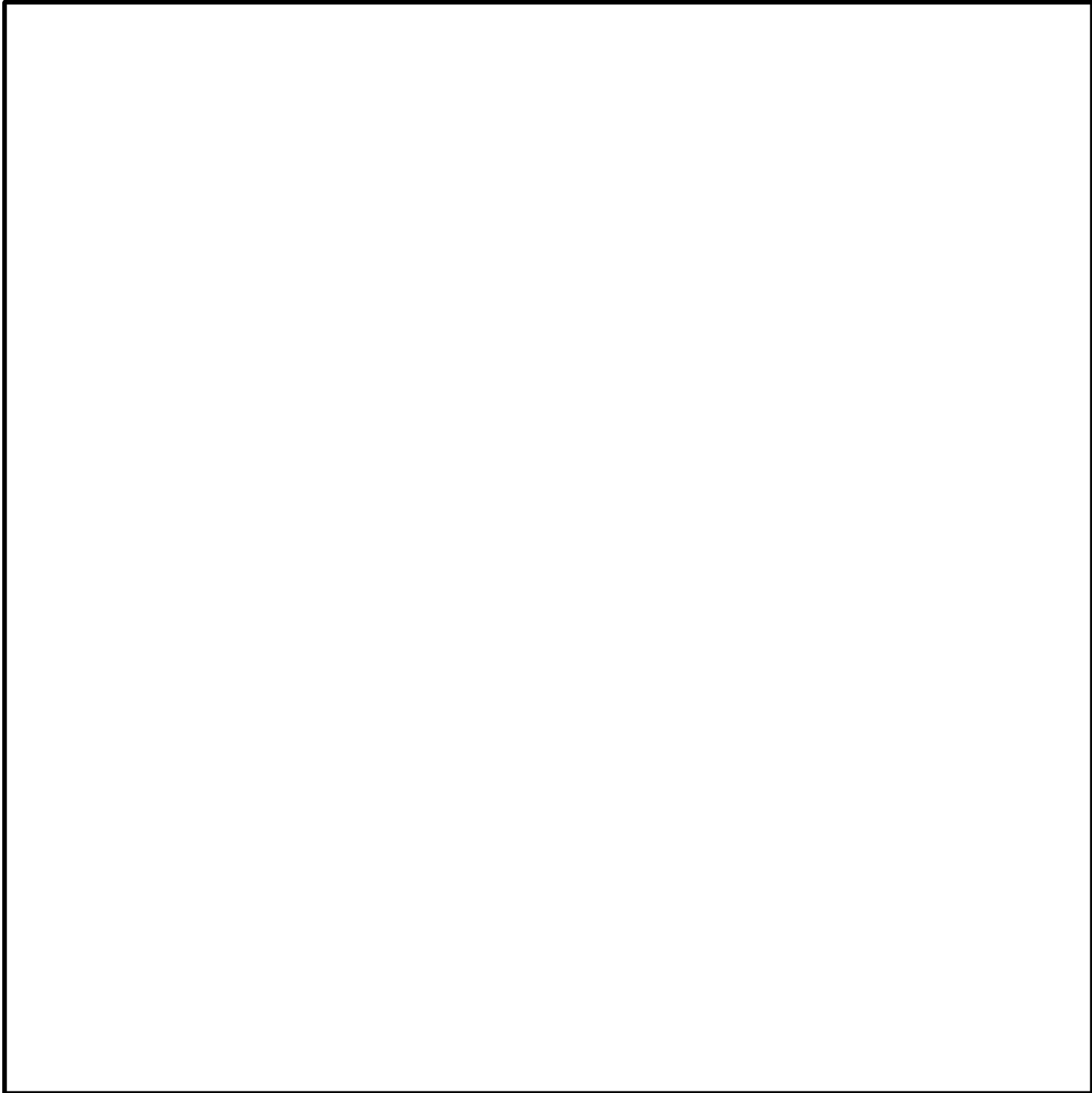
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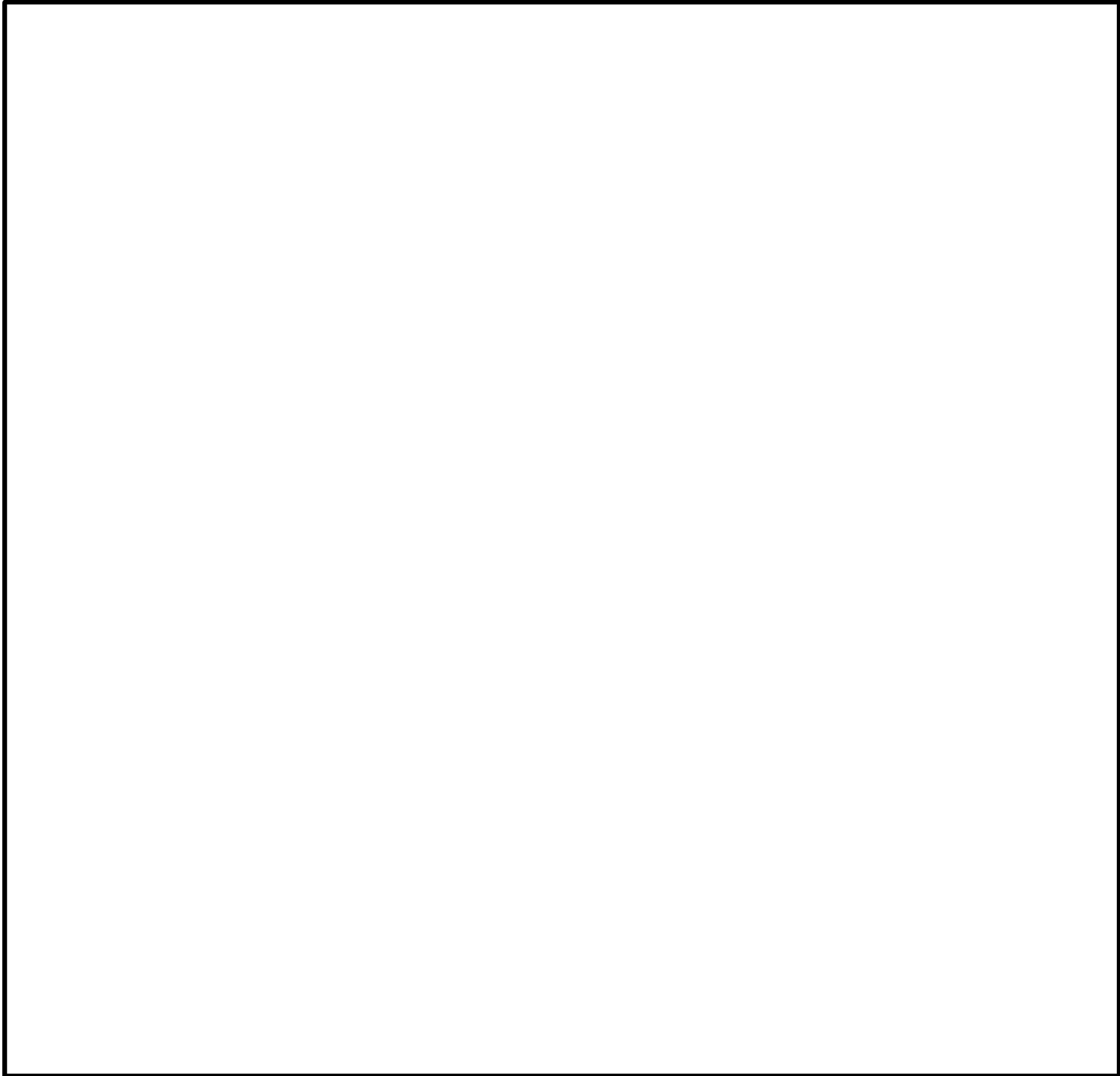
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Q. Is this action in response to the caravan?

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From: Nuebel Kovarik, Kathy
Sent: Thursday, November 22, 2018 8:36 PM
To: Higgins, Jennifer B; Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Kim, Ted H
Cc: Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10
Attachments: RIM DRAFT v10 JBH-JR.doc

Reviewed this, and it's a bit concerning that CBP sent it around again leaving in the part about asking questions (vs presumption/manifestation) as was discussed. I struck it all to make the point more boldly. ☺ Not sure my edits are worth sending up, but I added something on access to counsel issues. **Do you think this will start on Friday?**

From: Higgins, Jennifer B
Sent: Thursday, November 22, 2018 10:50 AM
To: Mura, Elizabeth E <[REDACTED]> Lafferty, John L
[REDACTED] Rellis, Jennifer L <[REDACTED]>; Symons, Craig M
(b)(6) [REDACTED] Kim, Ted H <[REDACTED]>; Nuebel Kovarik, Kathy (b)(6)
[REDACTED]
Cc: Ries, Lora L <[REDACTED]>; Stoddard, Kaitlin V <[REDACTED]>
Subject: FW: Updated RIM- V10

Happy Thanksgiving!! I've made some edits to this latest draft which is **NOT due today**!! Hurray.

Jennifer R, this includes your edits from version 9 as well.

If anyone has additional edits/ comments, send them my way by 10:00am on Friday and I will consolidate.

Referred to USC Customs and Border Protection

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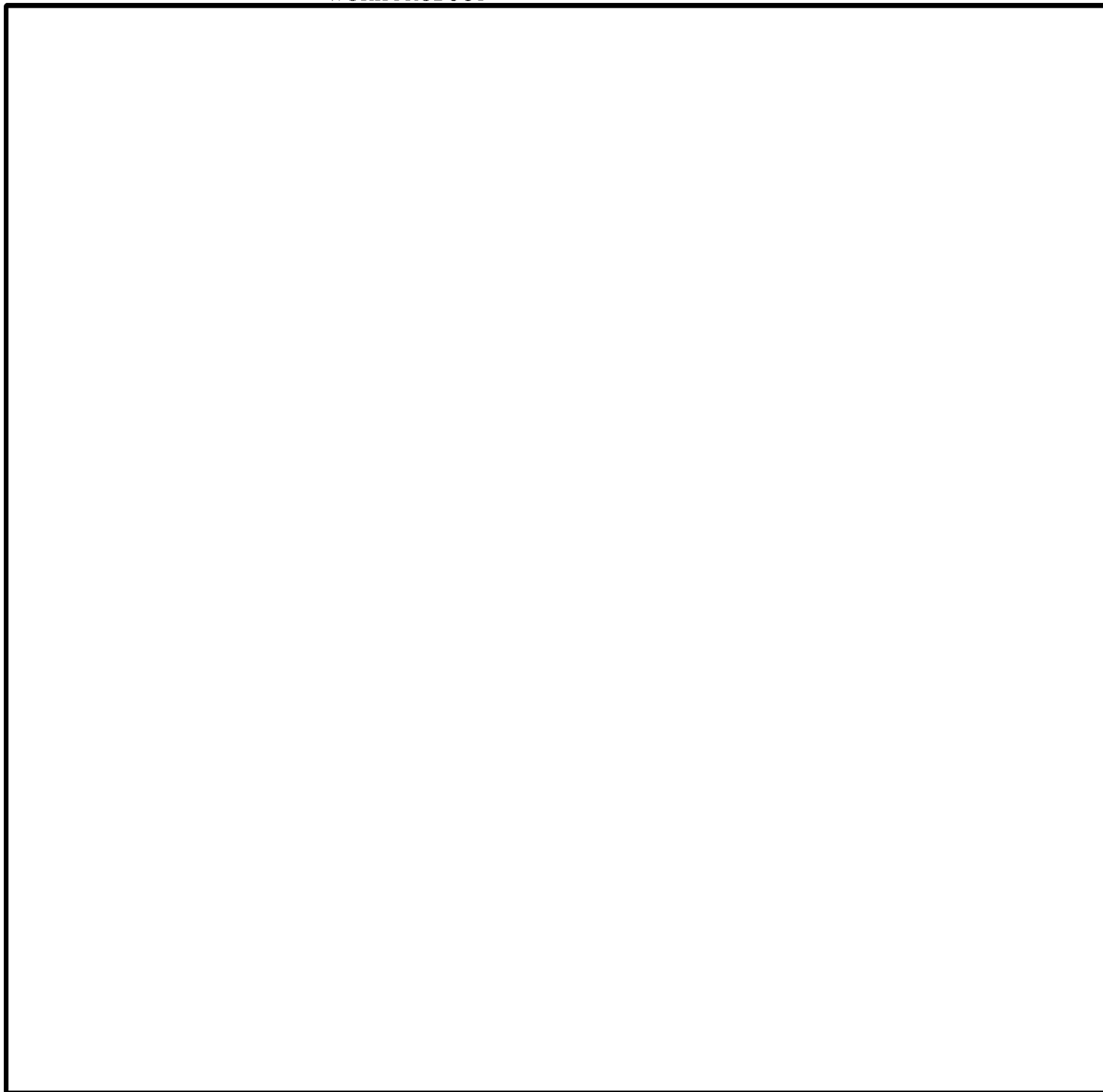
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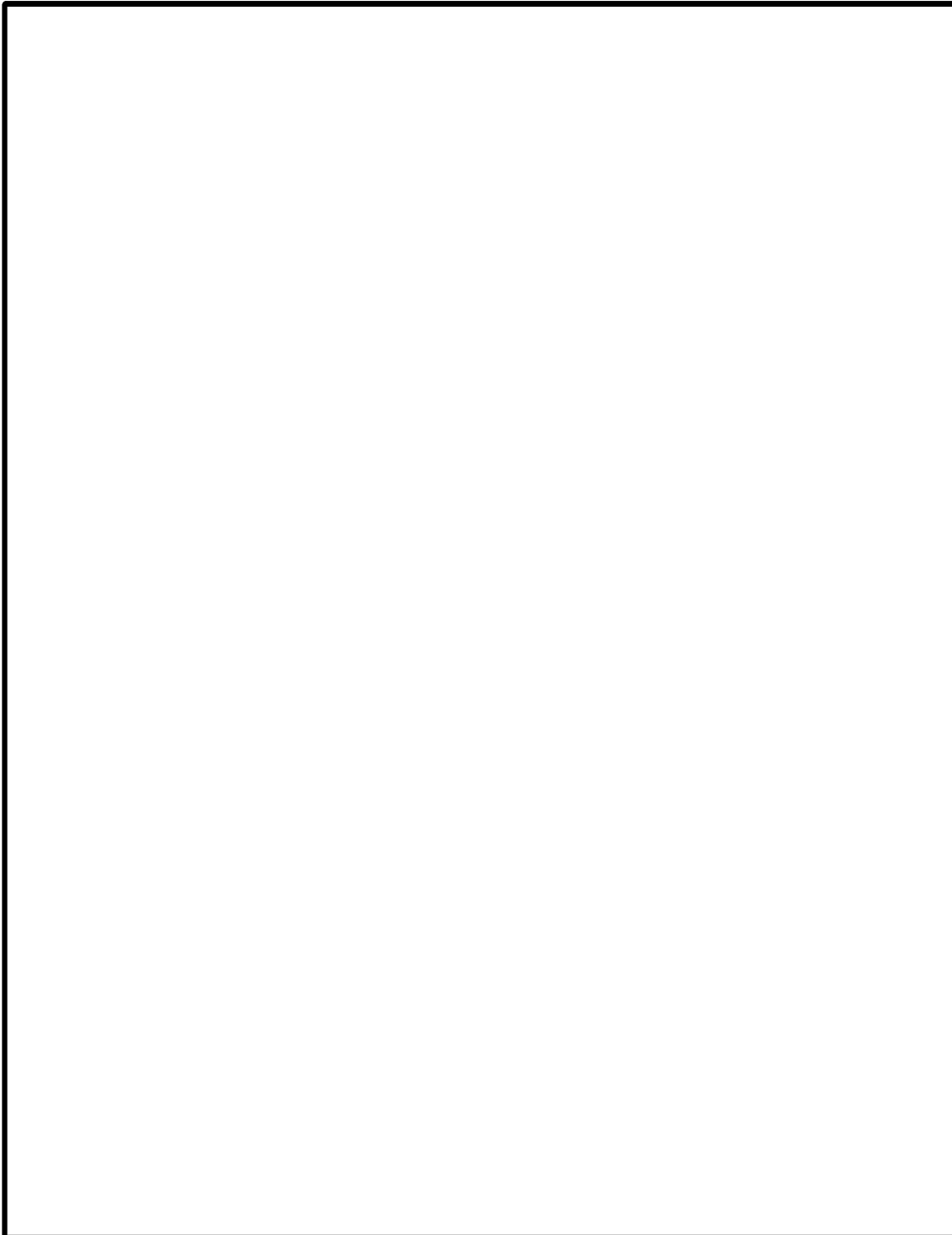
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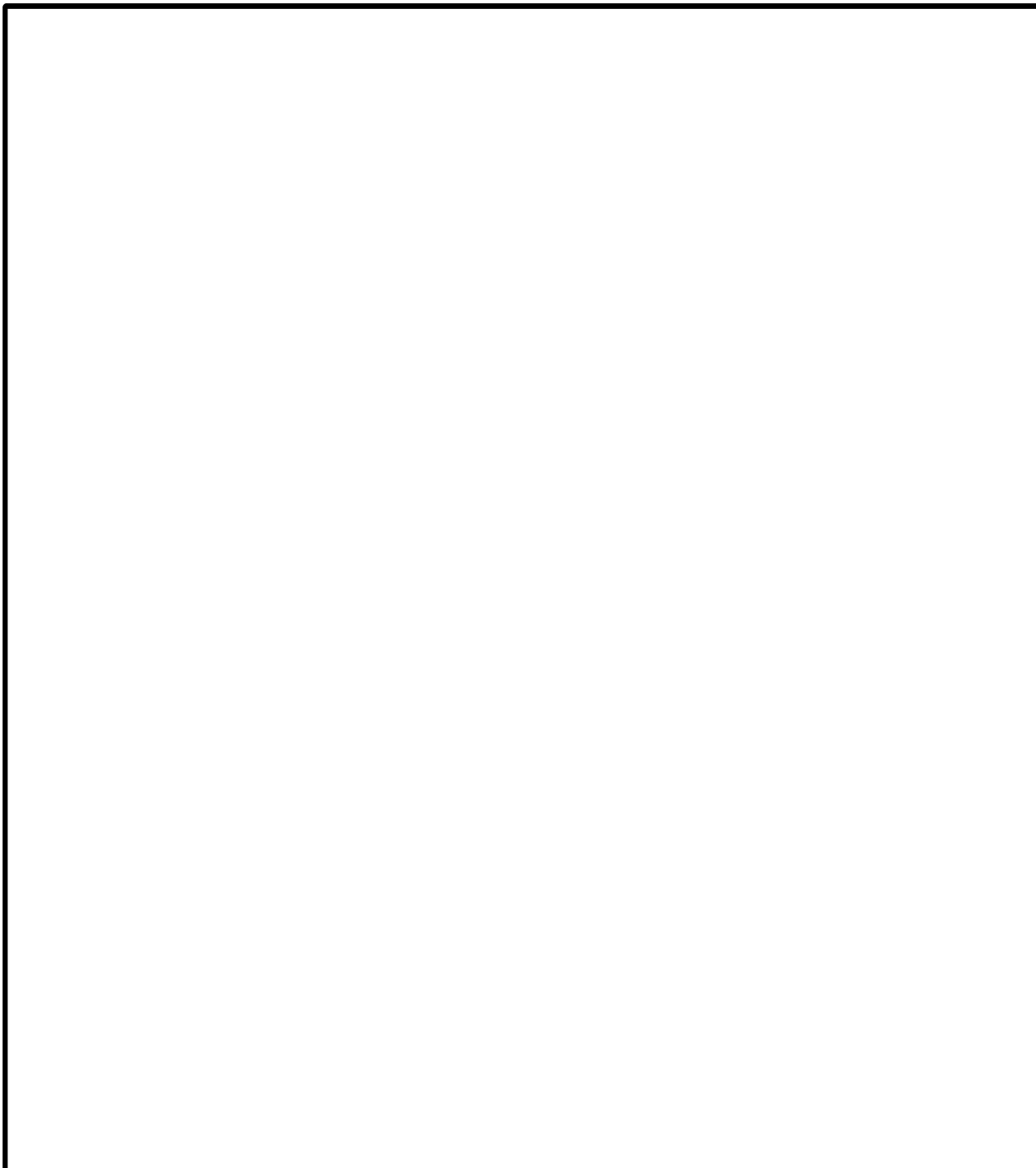


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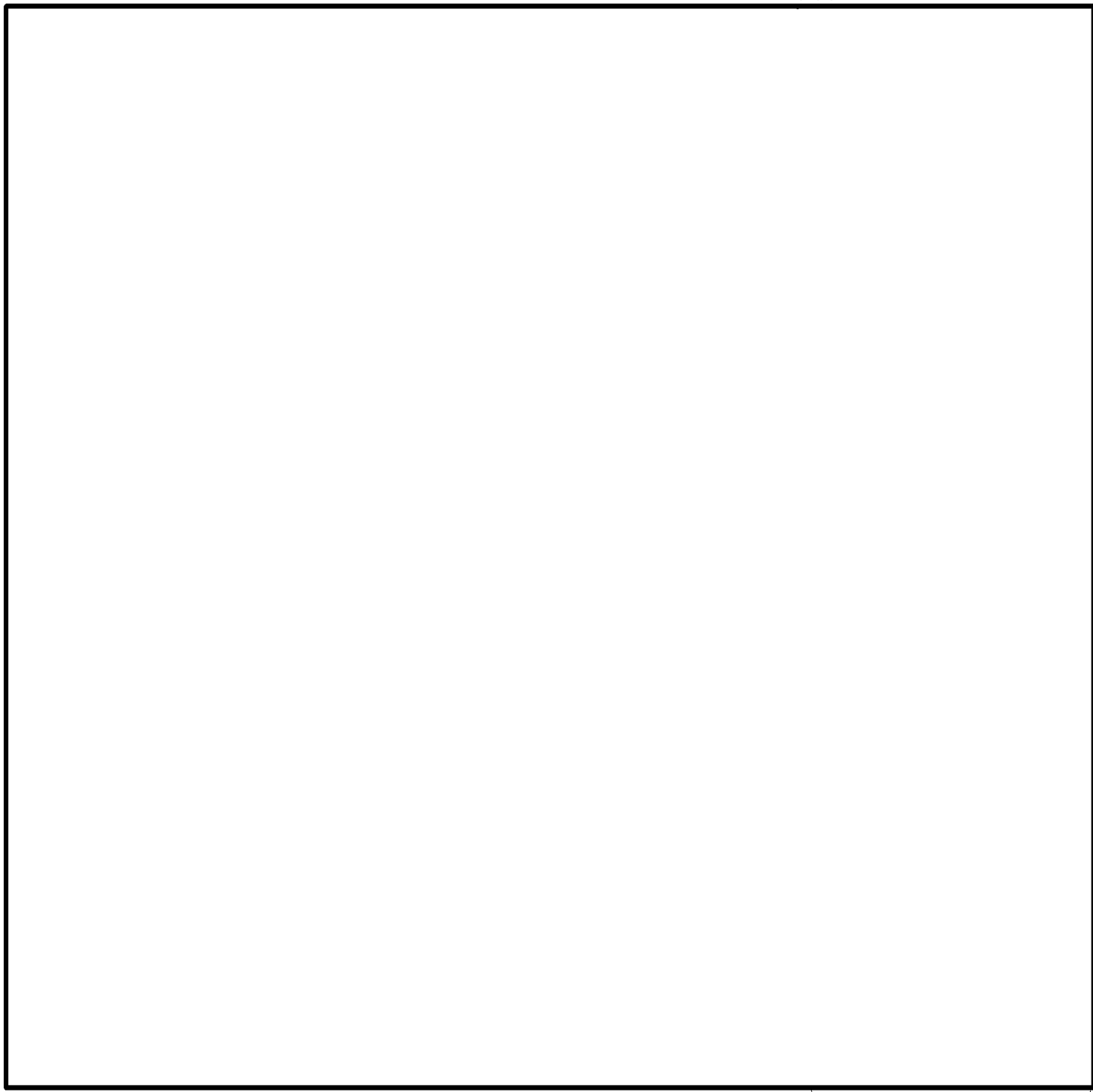
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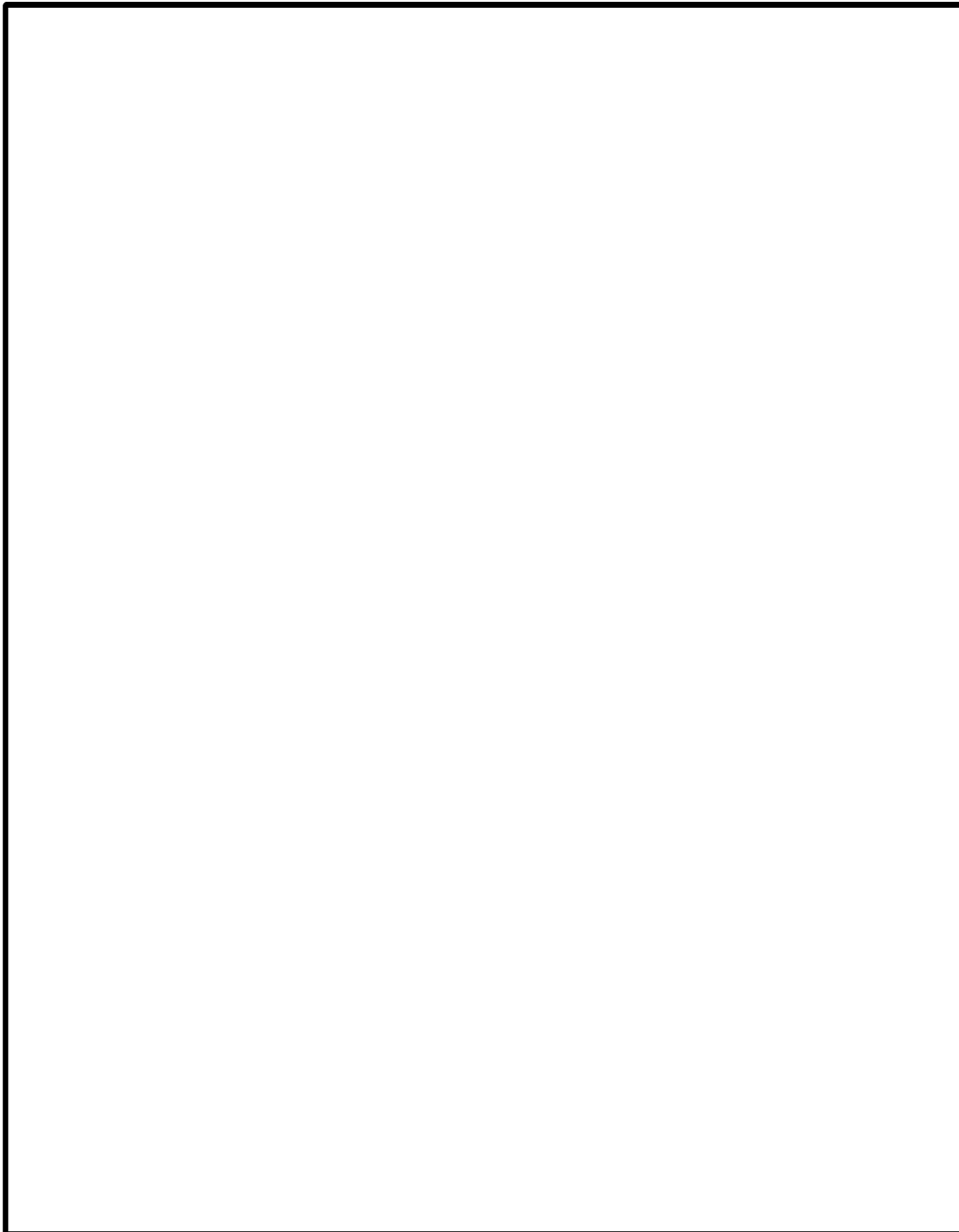
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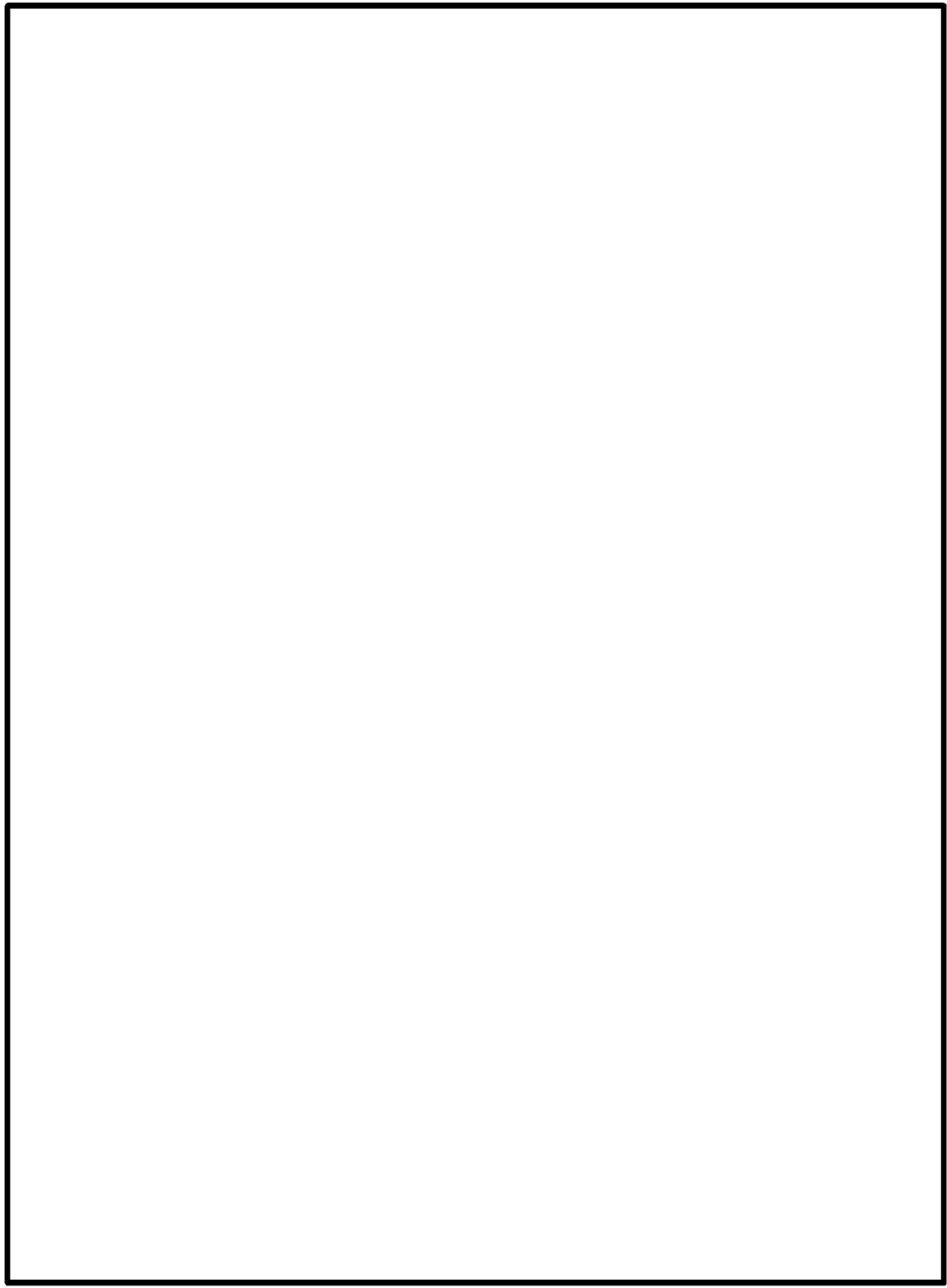
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Sent: Friday, November 23, 2018 5:36 AM
To: Nuebel Kovarik, Kathy
Cc: Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Kim, Ted H; Ries, Lora L; Stoddard, Kaitlin V
Subject: Re: Updated RIM- V10

[Redacted]

(b)(5)

Sent from my iPhone

On Nov 22, 2018, at 9:35 PM, Nuebel Kovarik, Kathy <[Redacted]> wrote:

(b)(5)

[Redacted]

(b)(5)

From: Higgins, Jennifer B
Sent: Thursday, November 22, 2018 10:50 AM
To: Mura, Elizabeth E <[Redacted]>; Lafferty, John L <[Redacted]>; Rellis, Jennifer L <[Redacted]>; Symons, Craig M <[Redacted]>; Kim, Ted H <[Redacted]>; Nuebel Kovarik, Kathy <[Redacted]>
Cc: Ries, Lora L <[Redacted]> Stoddard, Kaitlin V <[Redacted]>
Subject: FW: Updated RIM- V10

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Jennifer R, this includes your edits from version 9 as well.

If anyone has additional edits/ comments, send them my way by 10:00am on Friday and I will consolidate.

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Cc: Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Kim, Ted H; Ries, Lora L; Stoddard, Kaitlin V
Subject: Re: Updated RIM- V10

Ah, I see. Ignore those edits then. Sorry about that.

(b)(6)

On Nov 23, 2018, at 6:35 AM, Higgins, Jennifer B <[REDACTED]> wrote:

[REDACTED]

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(b)(6) On Nov 22, 2018, at 9:35 PM, Nuebel Kovarik, Kathy <[REDACTED]> wrote:

[REDACTED]

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Sent: Thursday, November 22, 2018 10:50 AM (b)(6)
To: Mura, Elizabeth E <[REDACTED]>; Lafferty, John L <[REDACTED]>; Rellis, Jennifer L <[REDACTED]>; Symons, Craig M <[REDACTED]>; Kim, Ted H <[REDACTED]>; Nuebel Kovarik, Kathy <[REDACTED]>
Cc: Ries, Lora L <[REDACTED]>; Stoddard, Kaitlin V <[REDACTED]>
Subject: FW: Updated RIM- V10 (b)(6)

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From: Symons, Craig M
Sent: Friday, November 23, 2018 7:19 AM
To: Nuebel Kovarik, Kathy; Higgins, Jennifer B
Cc: Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Kim, Ted H; Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10

I'm reviewing now, but I'll send my edits directly to OGC HQ per instructions from the GC. So, please do not hold this for me. Thanks!

Craig M. Symons

Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. [REDACTED] Cell [REDACTED]



(b)(6)

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From: Nuebel Kovarik, Kathy
Sent: Friday, November 23, 2018 7:53 AM
To: Higgins, Jennifer B [REDACTED]
Cc: Mura, Elizabeth E [REDACTED] Lafferty, John L [REDACTED]
[REDACTED] Rellis, Jennifer L [REDACTED]; Symons, Craig M [REDACTED]
(b)(6) [REDACTED] Kim, Ted H [REDACTED]; Ries, Lora L [REDACTED]
[REDACTED] Stoddard, Kaitlin V [REDACTED] (b)(6)
Subject: Re: Updated RIM- V10

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[REDACTED]

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<[REDACTED]> wrote:

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(b)(5)

From: Higgins, Jennifer B

Sent: Thursday, November 22, 2018 10:50 AM

To: Mura, Elizabeth E <[redacted]>; Lafferty, John

L <[redacted]>; Rellis, Jennifer L

<[redacted]>; Symons, Craig M

<[redacted]>; Kim, Ted H

(b)(6)

<[redacted]>; Nuebel Kovarik, Kathy

<[redacted]>

Cc: Ries, Lora L <[redacted]>; Stoddard, Kaitlin V

<[redacted]>

Subject: FW: Updated RIM- V10

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11/22/2018

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To: Symons, Craig M
Cc: Nuebel Kovarik, Kathy; Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Kim, Ted H; Ries, Lora L; Stoddard, Kaitlin V
Subject: Re: Updated RIM- V10



Sent from my iPhone

(b)(6)

On Nov 23, 2018, at 8:18 AM, Symons, Craig M <(b)(6)> wrote:

I'm reviewing now, but I'll send my edits directly to OGC HQ per instructions from the GC. So, please do not hold this for me. Thanks!

Craig M. Symons

Chief Counsel | Office of the Chief Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Tel. (b)(6) | Cell (b)(6)

<image001.png> (b)(6)

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Sent: Friday, November 23, 2018 7:53 AM (b)(6)

To: Higgins, Jennifer B <(b)(6)>

Cc: Mura, Elizabeth E <(b)(6)> Lafferty, John L

<(b)(6)>; Rellis, Jennifer L <(b)(6)>

Symons, Craig M <(b)(6)>; Kim, Ted H

<(b)(6)>; Ries, Lora L <(b)(6)> Stoddard, Kaitlin V

<(b)(6)> (b)(6)

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Ah, I see. Ignore those edits then. Sorry about that.

(b)(6)

On Nov 23, 2018, at 6:35 AM, Higgins, Jennifer B <(b)(6)> wrote:



(b)(6)

Sent from my iPhone

On Nov 22, 2018, at 9:35 PM, Nuebel Kovarik, Kathy

(b)(5) [redacted] wrote:

(b)(5)

From: Higgins, Jennifer B

Sent: Thursday, November 22, 2018 10:50 AM

To: Mura, Elizabeth E

(b)(5) [redacted]; Lafferty, John L
[redacted] Rellis, Jennifer L
[redacted] Symons, Craig M
(b)(5) [redacted]; Kim, Ted H
[redacted]; Nuebel Kovarik, Kathy

Cc: Ries, Lora L [redacted]; Stoddard,
Kaitlin V [redacted]

Subject: FW: Updated RIM- V10

Happy Thanksgiving!! I've made some edits to this
latest draft which is **NOT due**
today!! Hurray.

Jennifer R, this includes your edits from version 9 as
well.

If anyone has additional edits/ comments, send them
my way by 10:00am on Friday and I will consolidate.

Referred to USC Customs and Border Protection

(b)(6)

(b)(6)

(b)(6)

From: Higgins, Jennifer B
Sent: Friday, November 23, 2018 8:44 AM
To: Kim, Ted H; Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10
Attachments: RIM DRAFT v10 USCIS 930am.doc

Latest version including Ted's comment and Kathy's input (but just flagging the manifestation issue rather than redlining.)

From: Kim, Ted H
Sent: Friday, November 23, 2018 8:39 AM
To: Higgins, Jennifer B; Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10

(b)(5)

From: Higgins, Jennifer B <[REDACTED]> (b)(5)
Sent: Thursday, November 22, 2018 10:50 AM
To: Mura, Elizabeth E <[REDACTED]>; Lafferty, John L
[REDACTED] Rellis, Jennifer L [REDACTED] Symons, Craig M
[REDACTED] Kim, Ted H <[REDACTED]> Nuebel Kovarik, Kathy
>
Cc: Ries, Lora L <[REDACTED]>; Stoddard, Kaitlin V <[REDACTED]>
Subject: FW: Updated RIM- V10 (b)(5)

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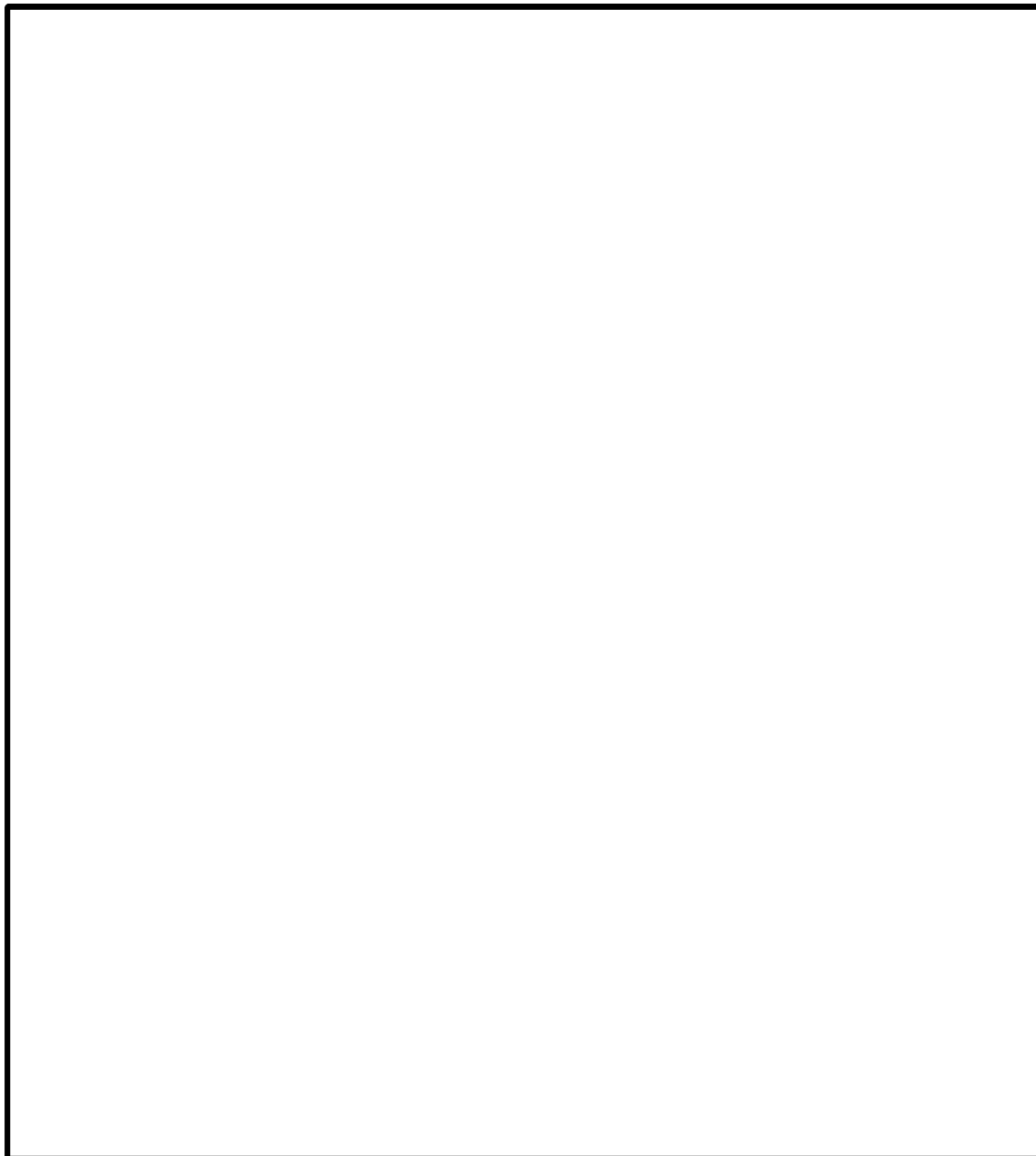
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**INA Section 235(b)(2)(C)
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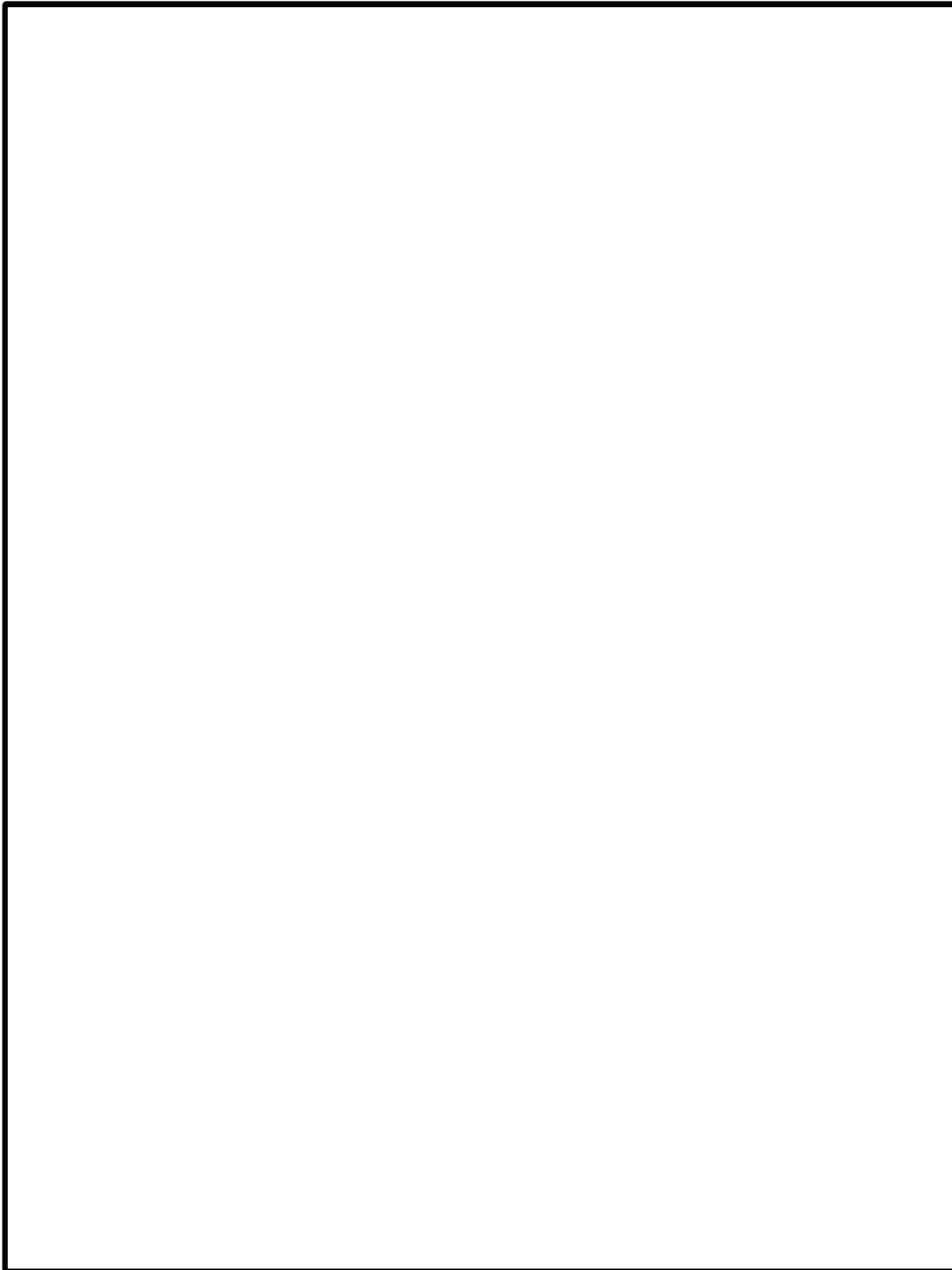
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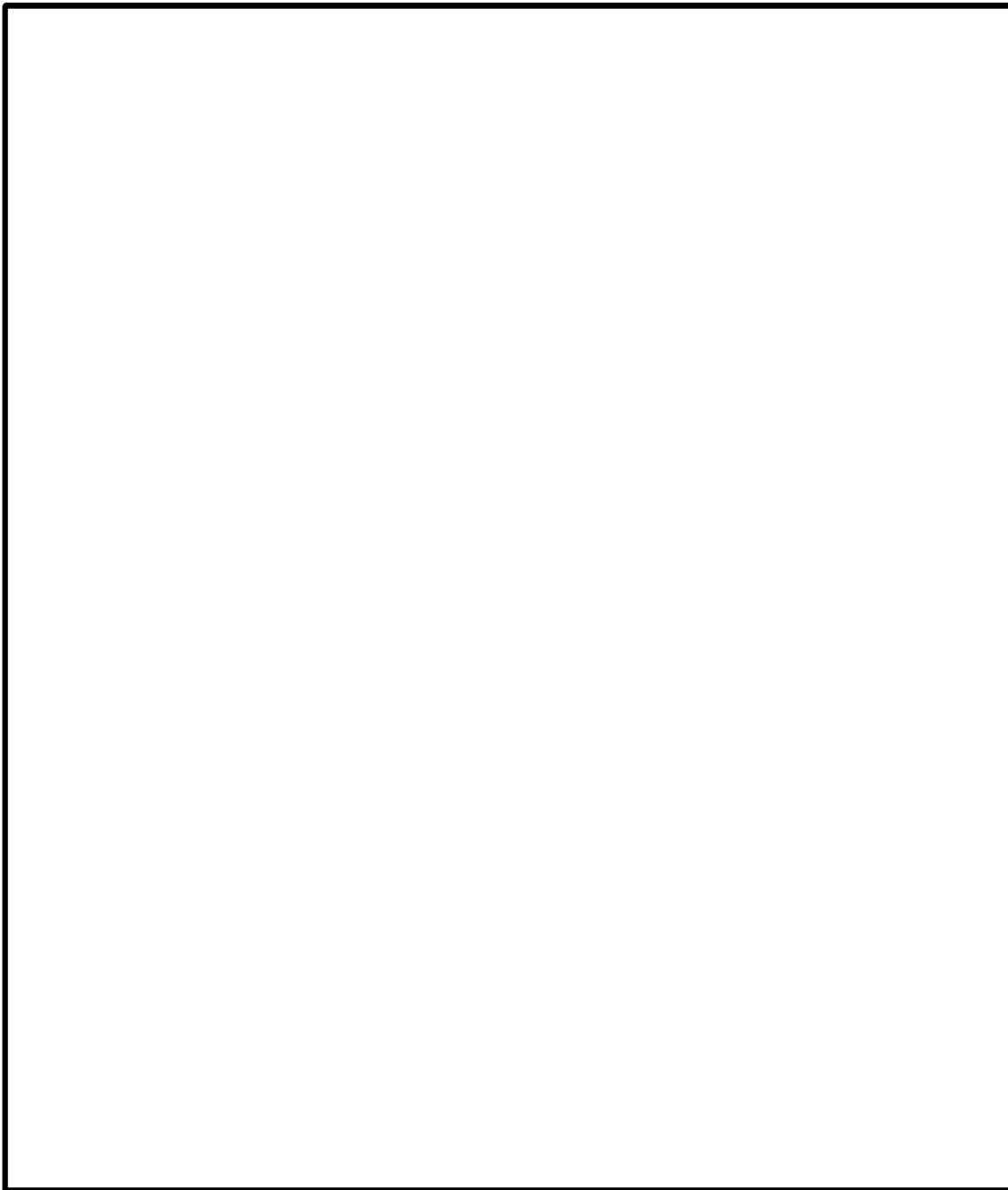
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From: Higgins, Jennifer B
Sent: Friday, November 23, 2018 8:57 AM
To: Rellis, Jennifer L; Mura, Elizabeth E
Subject: RE: Updated RIM- V10

Oh good! I thought John was out. If you come at 10:30 that should give us time to chat. The conf call is at 11.

From: Rellis, Jennifer L
Sent: Friday, November 23, 2018 9:56 AM
To: Higgins, Jennifer B; Mura, Elizabeth E
Subject: RE: Updated RIM- V10

Yes – we are here with John going over the document. We will be up in a minute.

From: Higgins, Jennifer B <[REDACTED]>
Sent: Friday, November 23, 2018 9:55 AM
To: Mura, Elizabeth E <[REDACTED]> (b)(6)
Cc: Rellis, Jennifer L <[REDACTED]>
Subject: RE: Updated RIM- V10

Ok. Are you and Jennifer R. in the office? If so, please come to Tracy's office on the 5th floor for a conf call.

From: Mura, Elizabeth E
Sent: Friday, November 23, 2018 9:47 AM
To: Higgins, Jennifer B
Cc: Kim, Ted H; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Nuebel Kovarik, Kathy; Ries, Lora L; Stoddard, Kaitlin V
Subject: Re: Updated RIM- V10

Thanks Jennifer. We are reviewing now and will have comments.

Sent from my iPhone

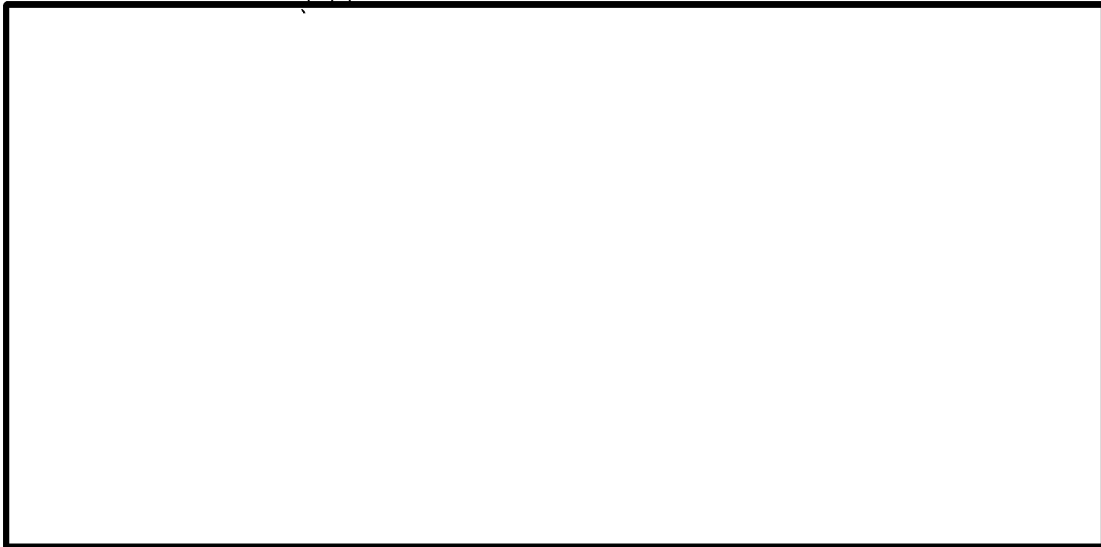
(b)(6)

On Nov 23, 2018, at 9:43 AM, Higgins, Jennifer B <[REDACTED]> wrote:

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From: Kim, Ted H
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To: Higgins, Jennifer B; Mura, Elizabeth E; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10

(b)(5)



From: Higgins, Jennifer B <[redacted]>
Sent: Thursday, November 22, 2018 10:50 AM (b)(6)
To: Mura, Elizabeth E <[redacted]>; Lafferty, John L <[redacted]>; Rellis, Jennifer L <[redacted]>; Symons, Craig M <[redacted]>; Kim, Ted H <[redacted]>; Nuebel Kovarik, Kathy <[redacted]>
Cc: Ries, Lora L <[redacted]>; Stoddard, Kaitlin V <[redacted]>
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Referred to US Customs and Border Protection

(b)(6)

(b)(6)

(b)(6)

From: Mura, Elizabeth E
Sent: Friday, November 23, 2018 9:02 AM
To: Higgins, Jennifer B; Kim, Ted H; Lafferty, John L; Rellis, Jennifer L; Symons, Craig M; Nuebel Kovarik, Kathy
Cc: Ries, Lora L; Stoddard, Kaitlin V
Subject: RE: Updated RIM- V10

Thanks Jennifer. We're reviewing right now.

Elizabeth E. Mura
Operations Branch Chief - Asylum Division
Refugee, Asylum and International Operations Directorate
Dept. of Homeland Security/U.S. Citizenship & Immigration Services

(b)(6)

Desk: [REDACTED] Mobile: [REDACTED] Fax: [REDACTED]

From: Higgins, Jennifer B [REDACTED]
Sent: Friday, November 23, 2018 9:44 AM
To: Kim, Ted H <[REDACTED]>; Mura, Elizabeth E <[REDACTED]>;
Lafferty, John L <[REDACTED]>; Rellis, Jennifer L <[REDACTED]>;
Symons, Craig M <[REDACTED]>; Nuebel Kovarik, Kathy
[REDACTED]
Cc: Ries, Lora L <[REDACTED]>; Stoddard, Kaitlin V <[REDACTED]>
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Subject: RE: Updated RIM- V10

(b)(5)

From: Higgins, Jennifer B [REDACTED]
Sent: Thursday, November 22, 2018 10:50 AM

(b)(6)

(b)(6)

To: Mura, Elizabeth E <[REDACTED]>; Lafferty, John L
<[REDACTED]>; Rellis, Jennifer L <[REDACTED]>; Symons, Craig M
<[REDACTED]>; Kim, Ted H <[REDACTED]>; Nuebel Kovarik, Kathy
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Subject: FW: Updated RIM- V10 (b)(6)

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(b)(6)

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From: Higgins, Jennifer B
Sent: Friday, November 23, 2018 9:58 AM
To: PETERLIN, MEGHANN K
Subject: RE: Updated RIM- V10
Attachments: RIM DRAFT v10 USCIS 11am.doc

Our edits attached. We may have more.

Referred to US Customs and Border Protection

(b)(6)

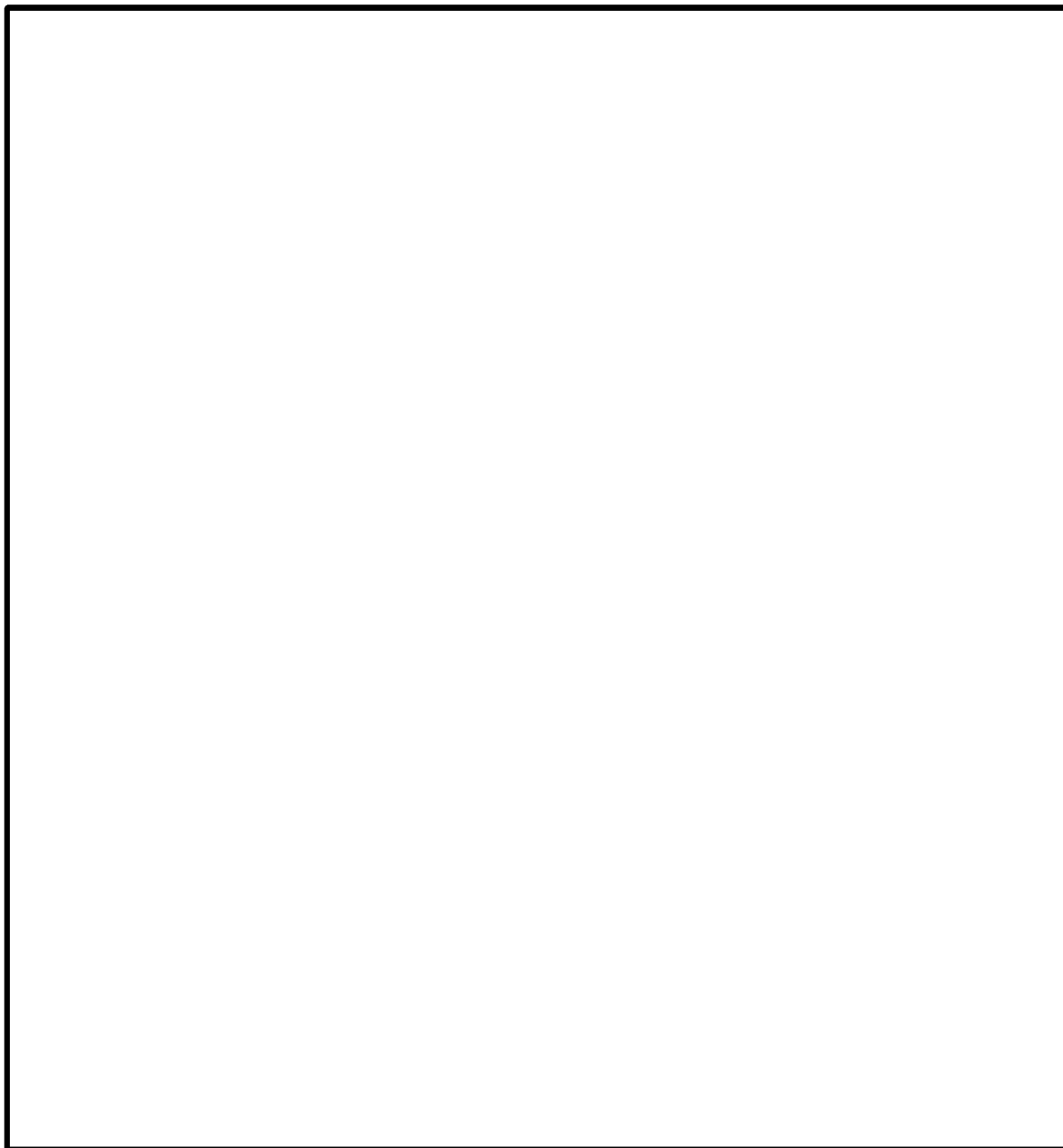
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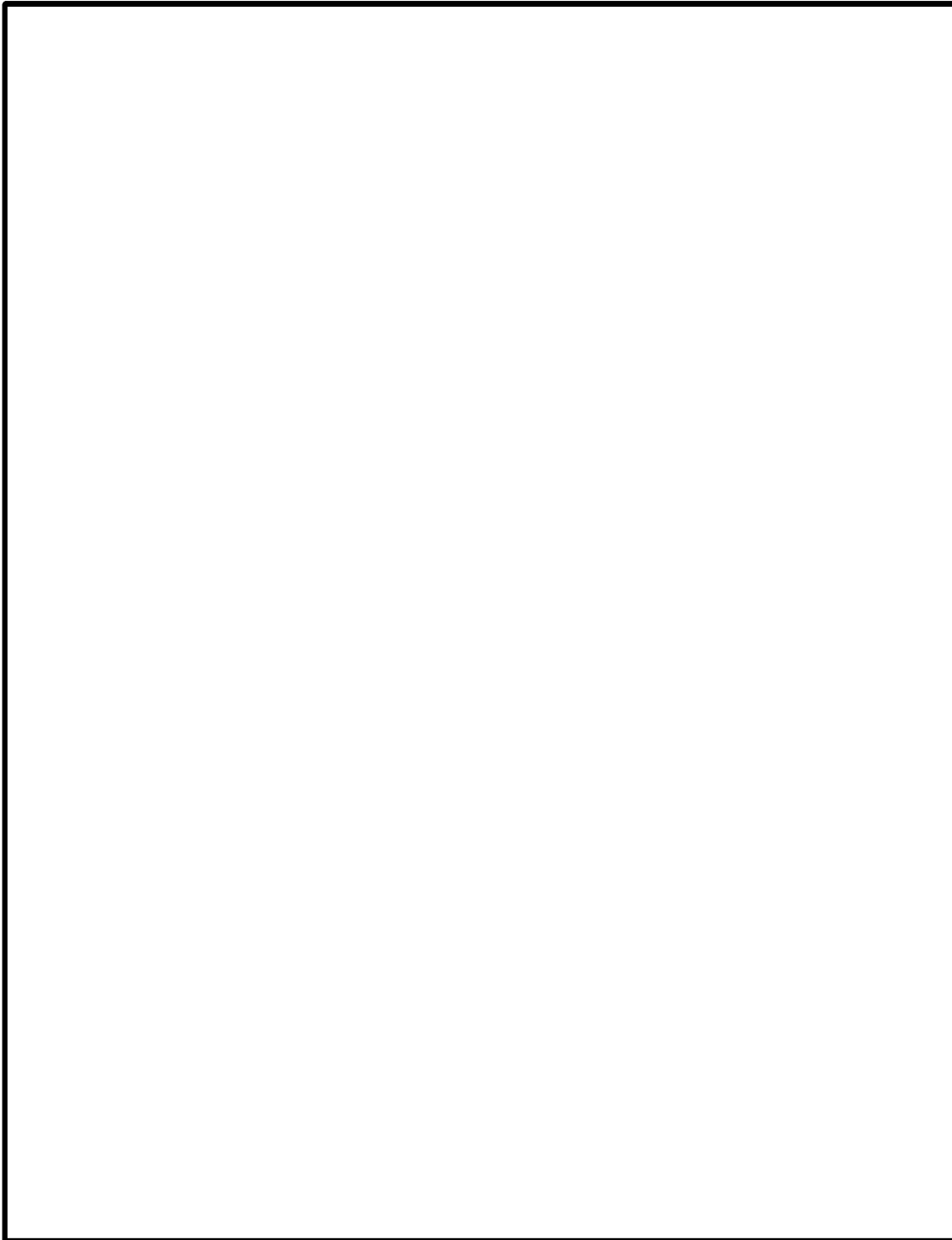
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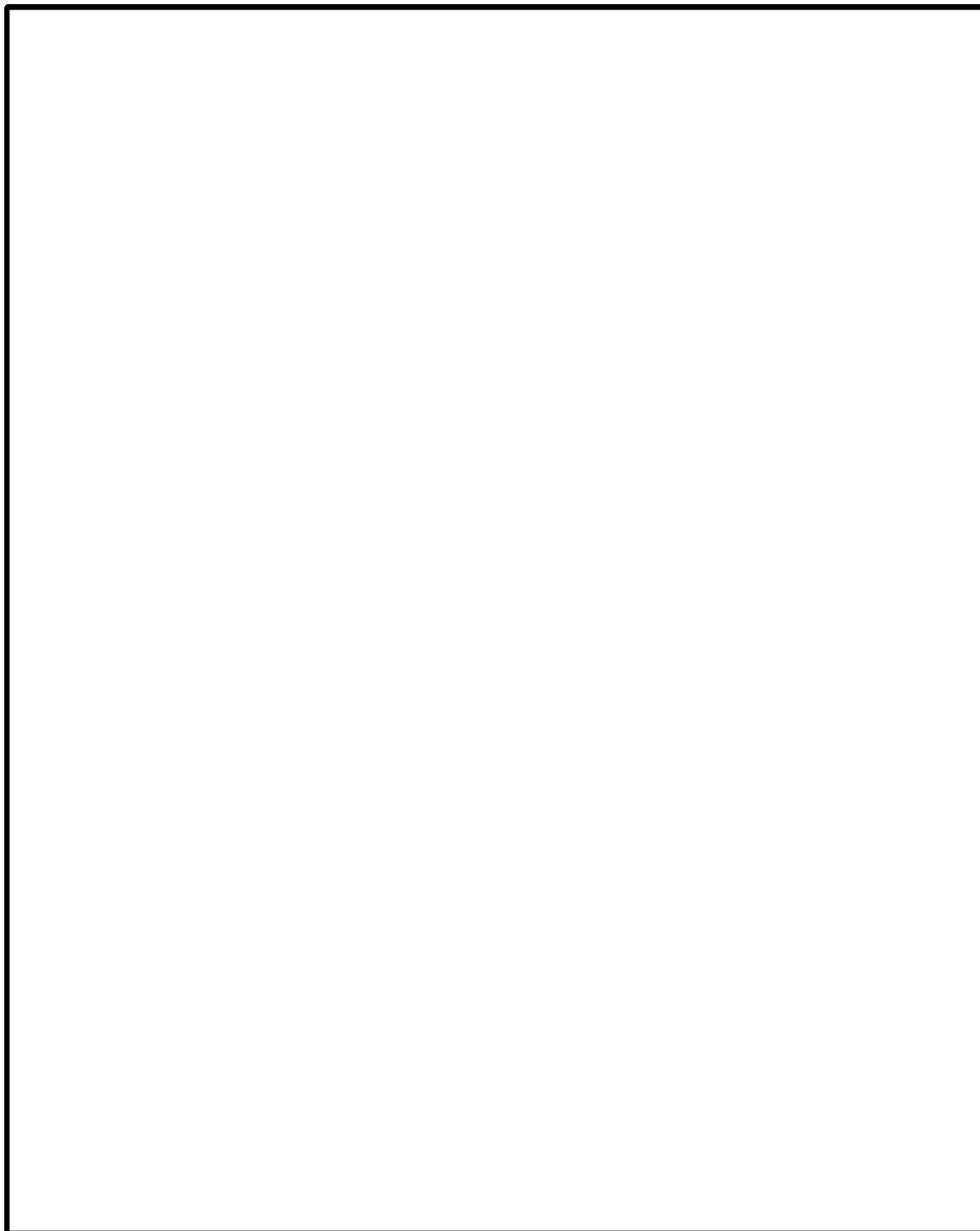
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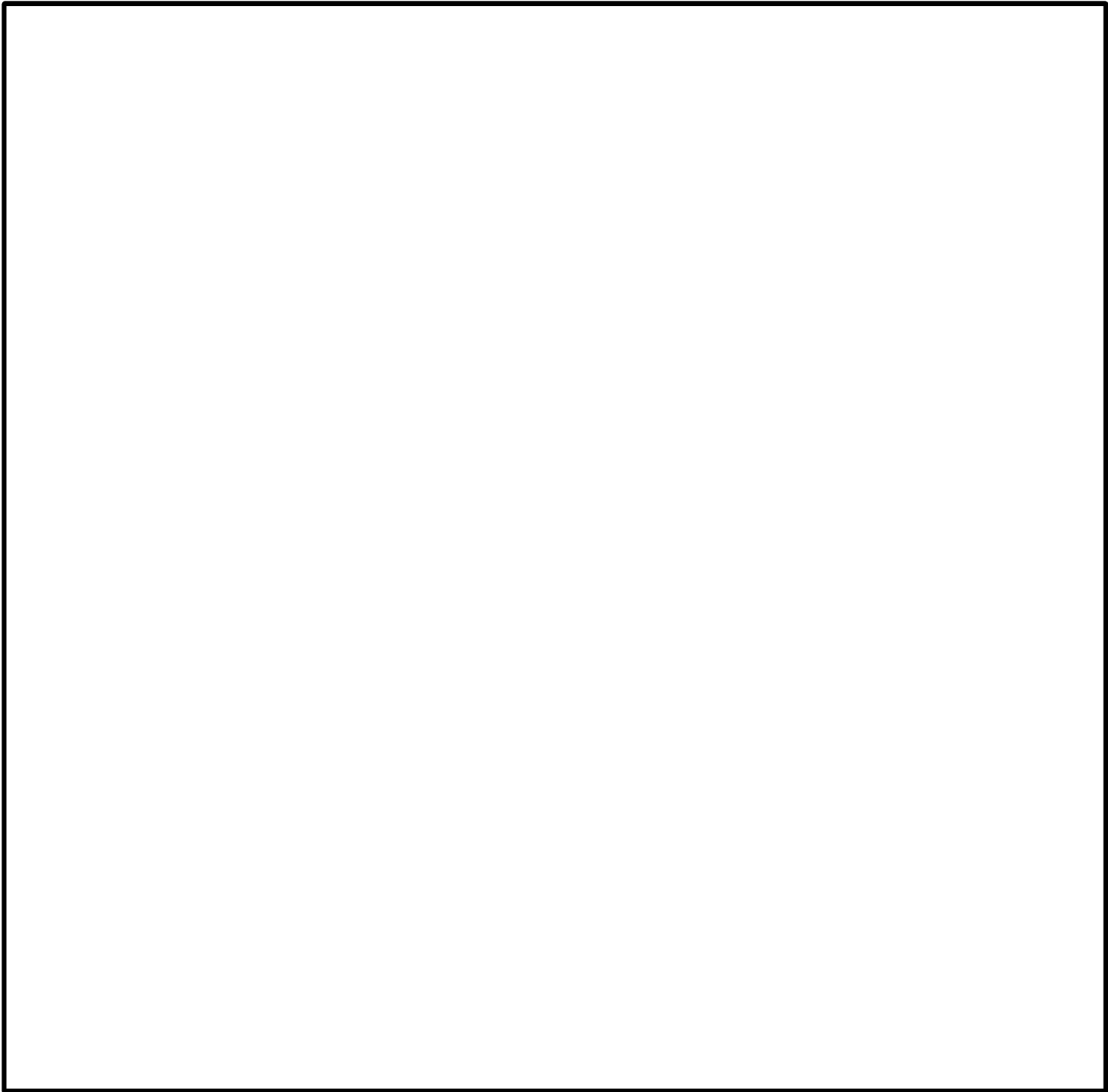
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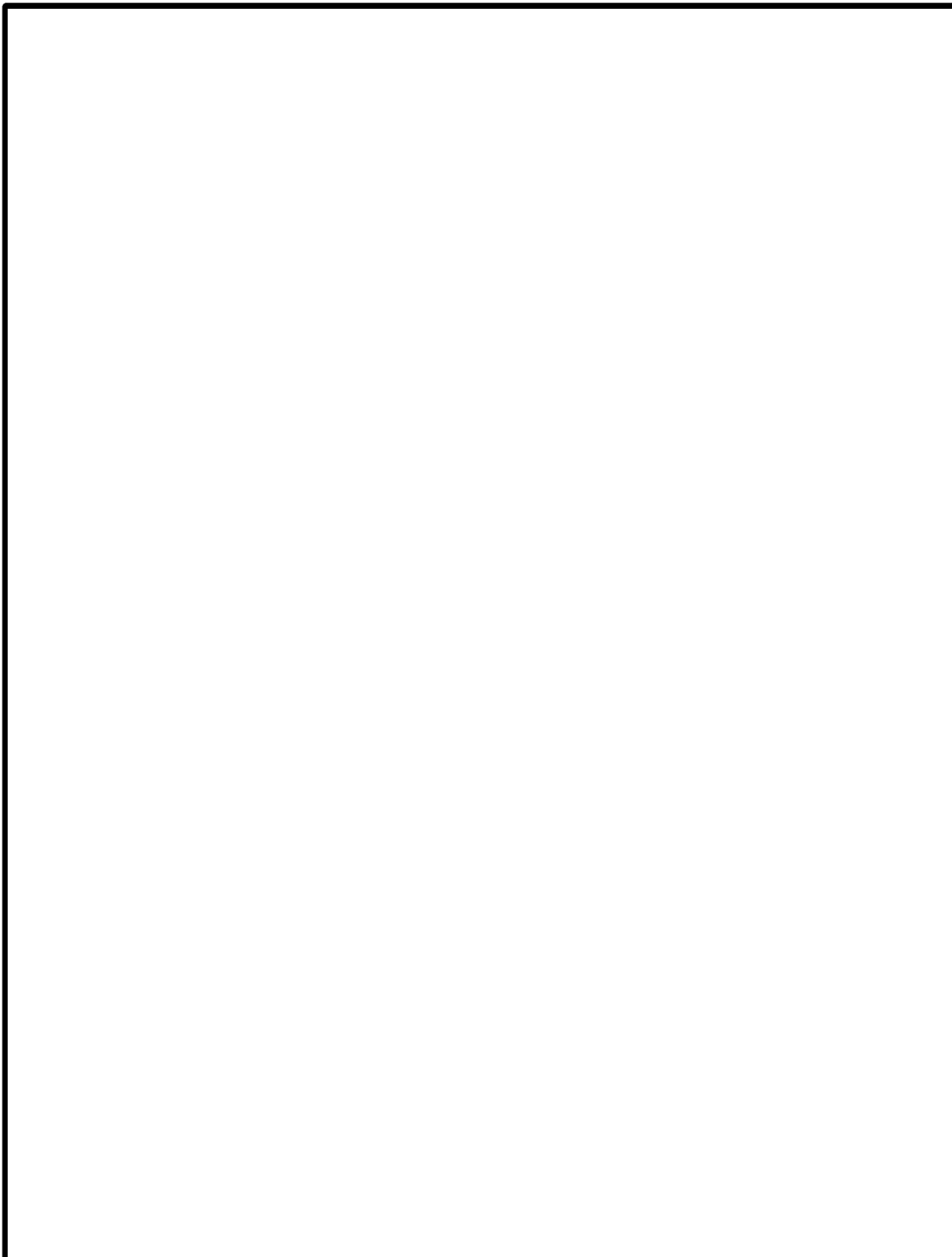
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Referred to USSC Customs and Border Protection

From: Higgins, Jennifer B

Sent: Friday, November 23, 2018 10:58 AM

To: PETERLIN, MEGHANN K <[REDACTED]>

(b)(6)

Subject: RE: Updated RIM- V10

Our edits attached. We may have more.

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(b)(6)

(b)(6)

Referred to US Customs and Border Protection

Referred to Department of Homeland Security

(b)(6)

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(b)(6)

(b)(6)

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Referred to US Customs and Border Protection

(b)(6)

(b)(6)

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(b)(6)

From: Higgins, Jennifer B
Sent: Friday, November 23, 2018 5:14 PM
To: Lafferty, John L
Subject: Fwd: Updated RIM- V10
Attachments: RIM DRAFT v10 USCIS 11am.doc; ATT00001.htm

This is the last version I have.....

Sent from my iPhone

Begin forwarded message:

From: "Higgins, Jennifer B" <[REDACTED]>
Date: November 23, 2018 at 10:57:40 AM EST (b)(6)
To: "PETERLIN, MEGHANN K" <[REDACTED]>
Subject: RE: Updated RIM- V10

Our edits attached. We may have more.

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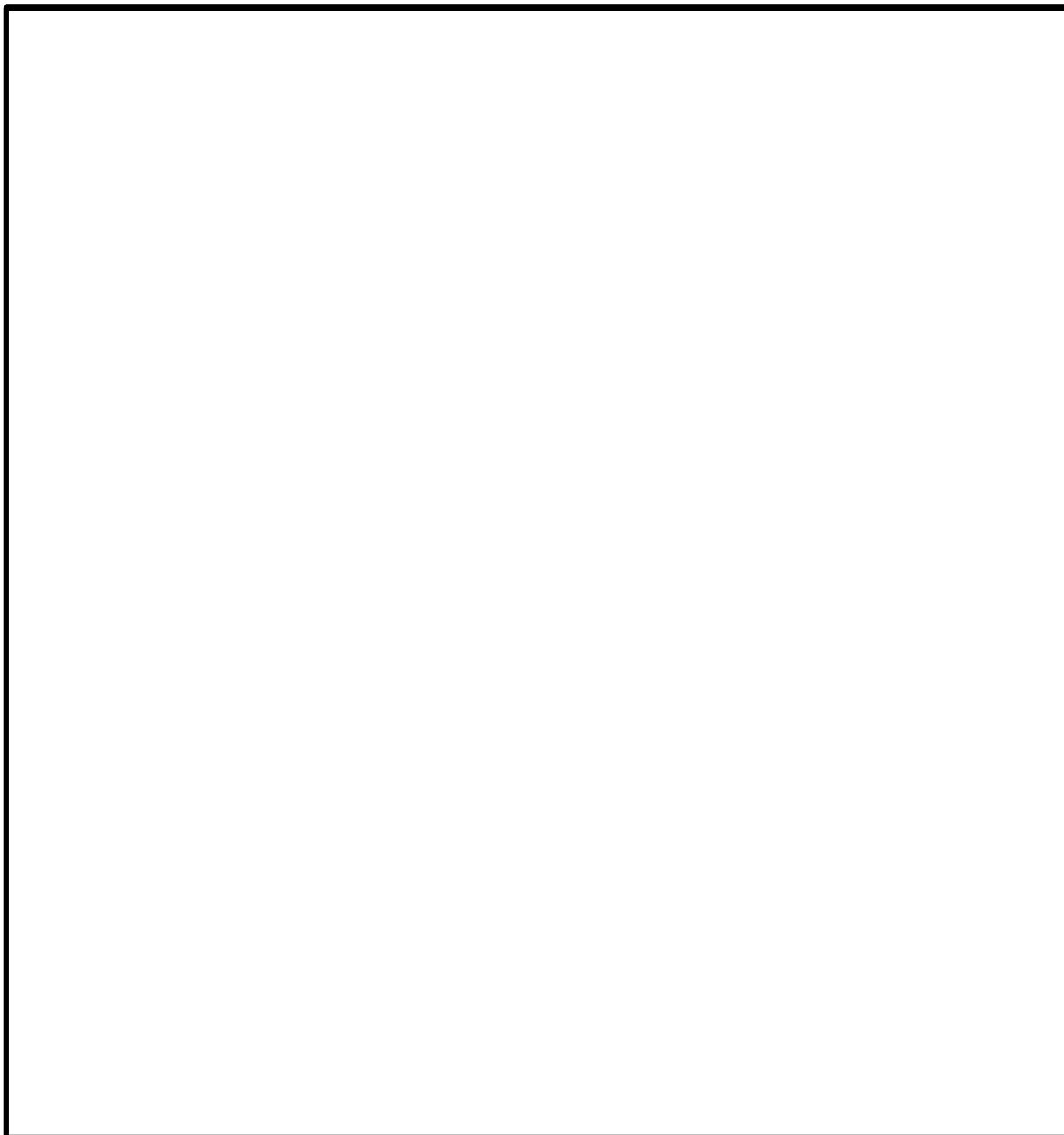
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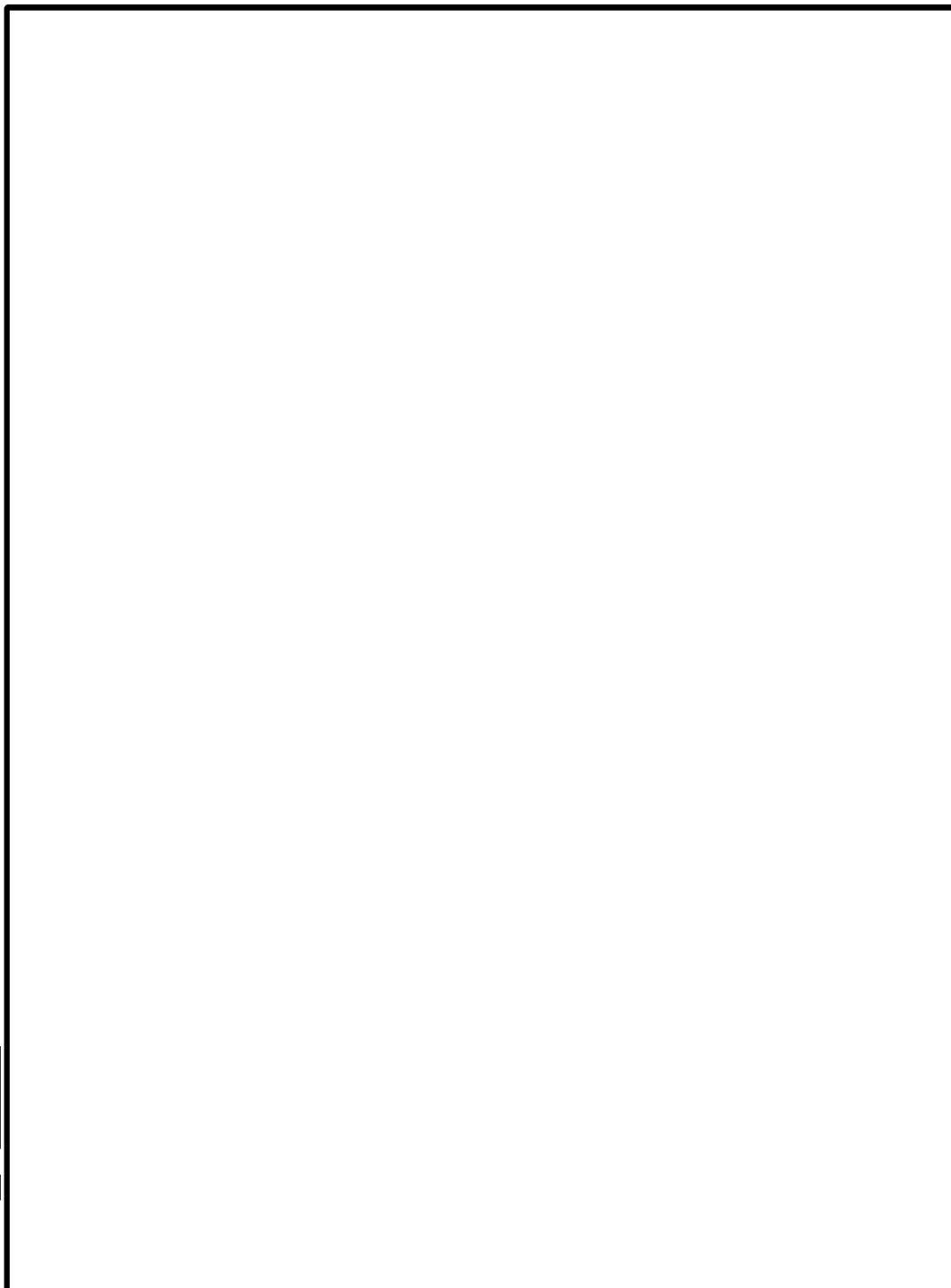
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- Waiting area for applicants: This also necessitates contract officers to both manage the desk to coordinate applicants for interview as well as to routinely patrol security/safety patrols of the workspace.

5. ICE

- a. VTC or in-person as appropriate, provide attorneys and other personnel as temporary immigration court facilities.
- b. Coordinate with the relevant DHS and interagency partners to secure DHS service contracts for the transportation, escort, and security of aliens between the POE and the court facility and while awaiting hearings, where applicable.
- c. Complete the requisite immigration paperwork subsequent to court orders.
- d. Provide transportation and logistics support between the designated POEs and courts upon the alien's return for their court hearing. This includes transportation at least 1 hour in advance of the scheduled hearing in order to facilitate access to counsel.

6. USCIS

- a. Deploy additional staff to the POEs or other designated area to conduct screening, and facilitate up to 120 RIM screenings per day at San Ysidro POE.

7. EOIR

- a. Assign an LNO at each affected POE or Station to coordinate actions with CBP and ERO, and support court date scheduling for those being issued an NTA.
- b. Provide appropriate DHS personnel with access to system(s) necessary to support court scheduling, which will be performed in coordination with DHS personnel.
- c. Assign enough immigration judges (IJs) to a dedicated docket, and necessary court staff, sufficient to complete proceedings before the IJ within 1 month of the initial hearing.
- d. Provide IJ review of USCIS negative findings via VTC prior to alien's departure from the POE upon initial screening.
- e. Coordinate with DHS to schedule hearings in a manner which limits the need to comingle adult males, adult females, and family units in the transportation and hearing process (e.g., all hearings on one day will be adult males, another will be adult females, and another will be family units).

Operational Process Flow

Alien Encounter– First encounter through wait in Mexico

When an alien is encountered by CBP (OFO/USBP), questions similar to those below will be asked of the alien by the processing officer/agent and properly recorded.

- Do you have a fear of being returned or removed to another country?
- If so, to which countries do you fear return or removal?

CBP Office of Field Operations (OFO):

- When an inadmissible alien presents him or herself at a POE, OFO will ask the aliens the two questions above at the commencement of processing.

Comment [JBH4]: At the morning call on Wednesday, we believed a decision was made to use a presumption and only if the alien manifested a fear to MEXICO would they be referred for screening. Has that decision been revisited?

Comment [JBH5]: See comment just above.

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ATTORNEY WORK PRODUCT**

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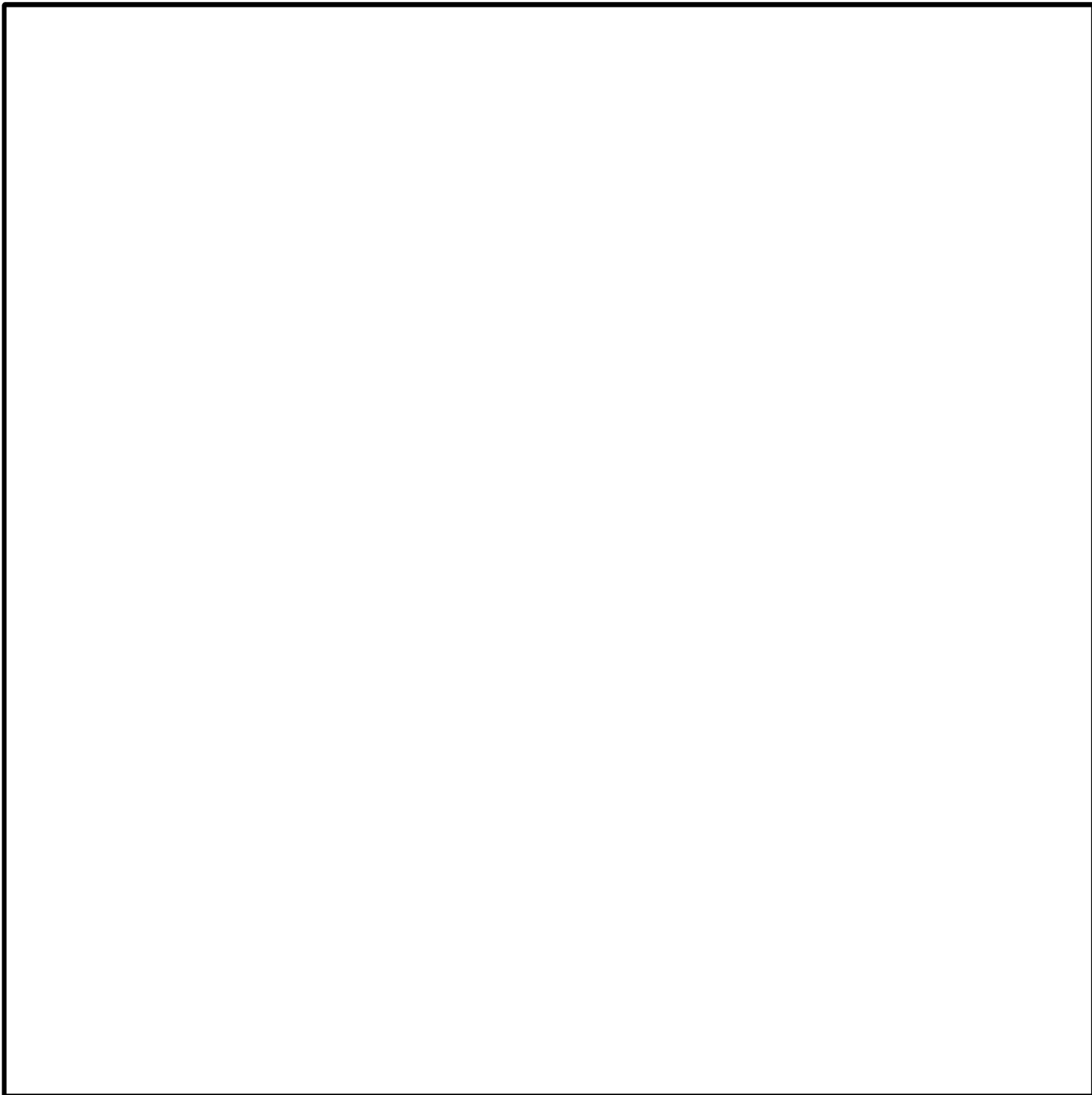
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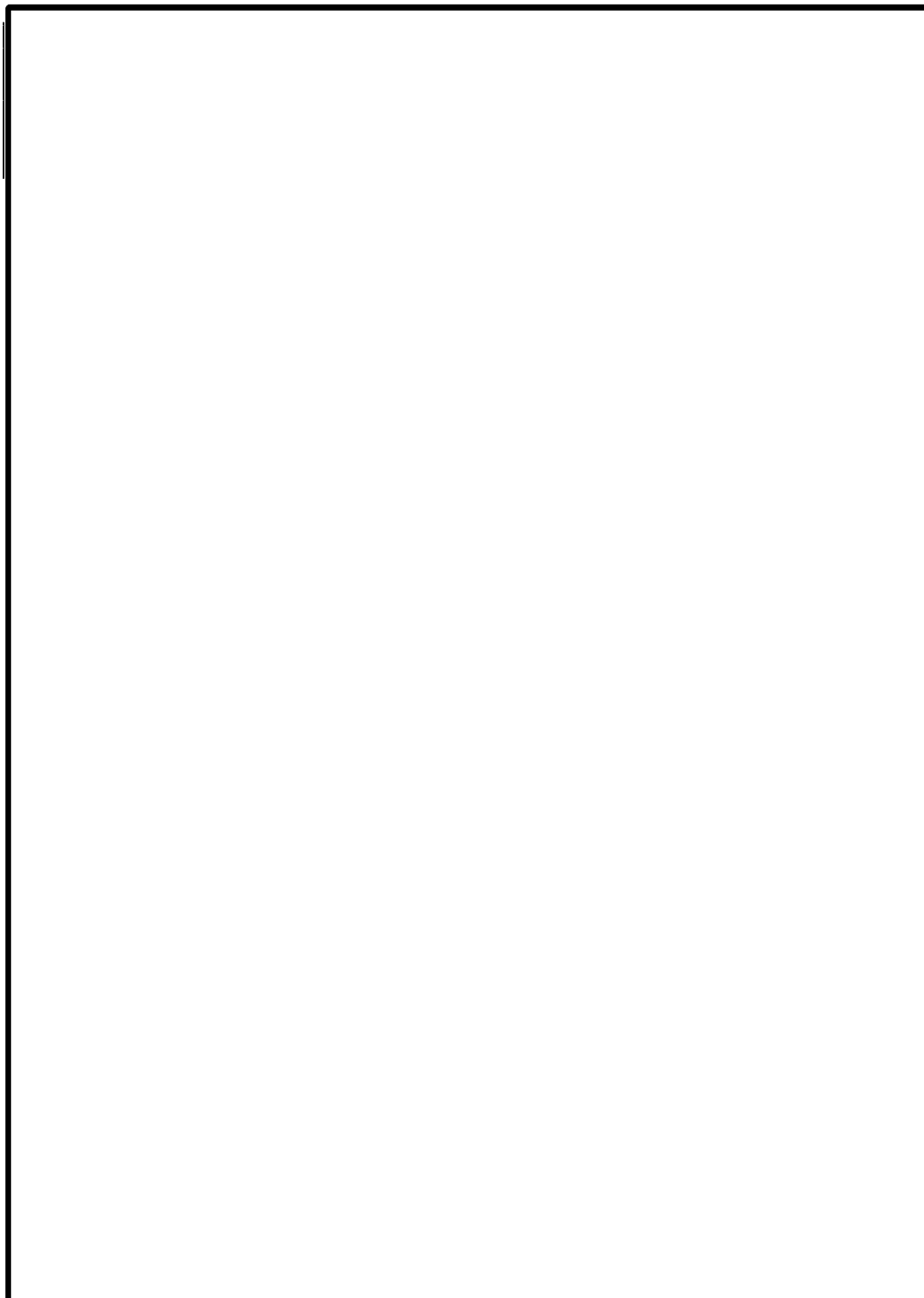
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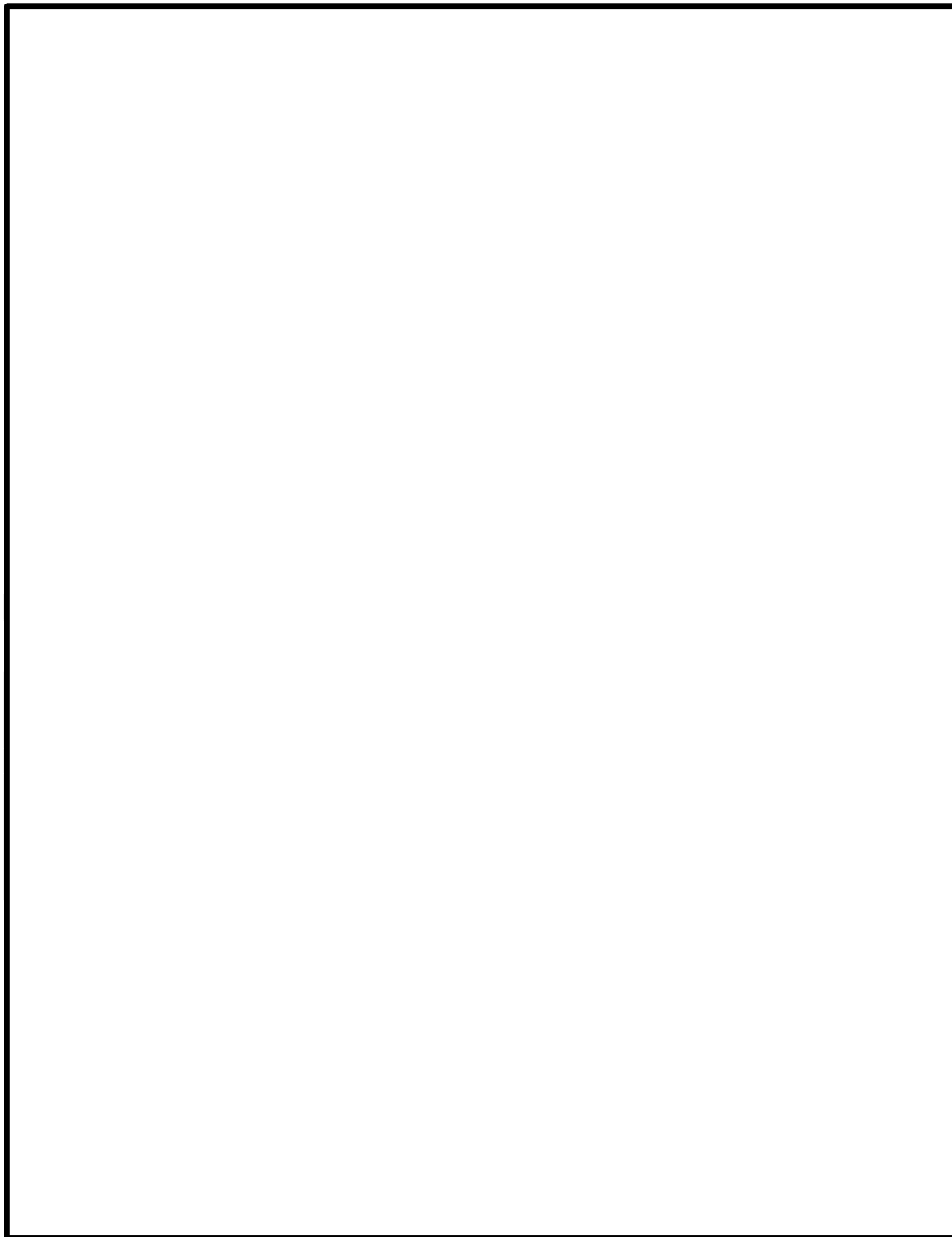
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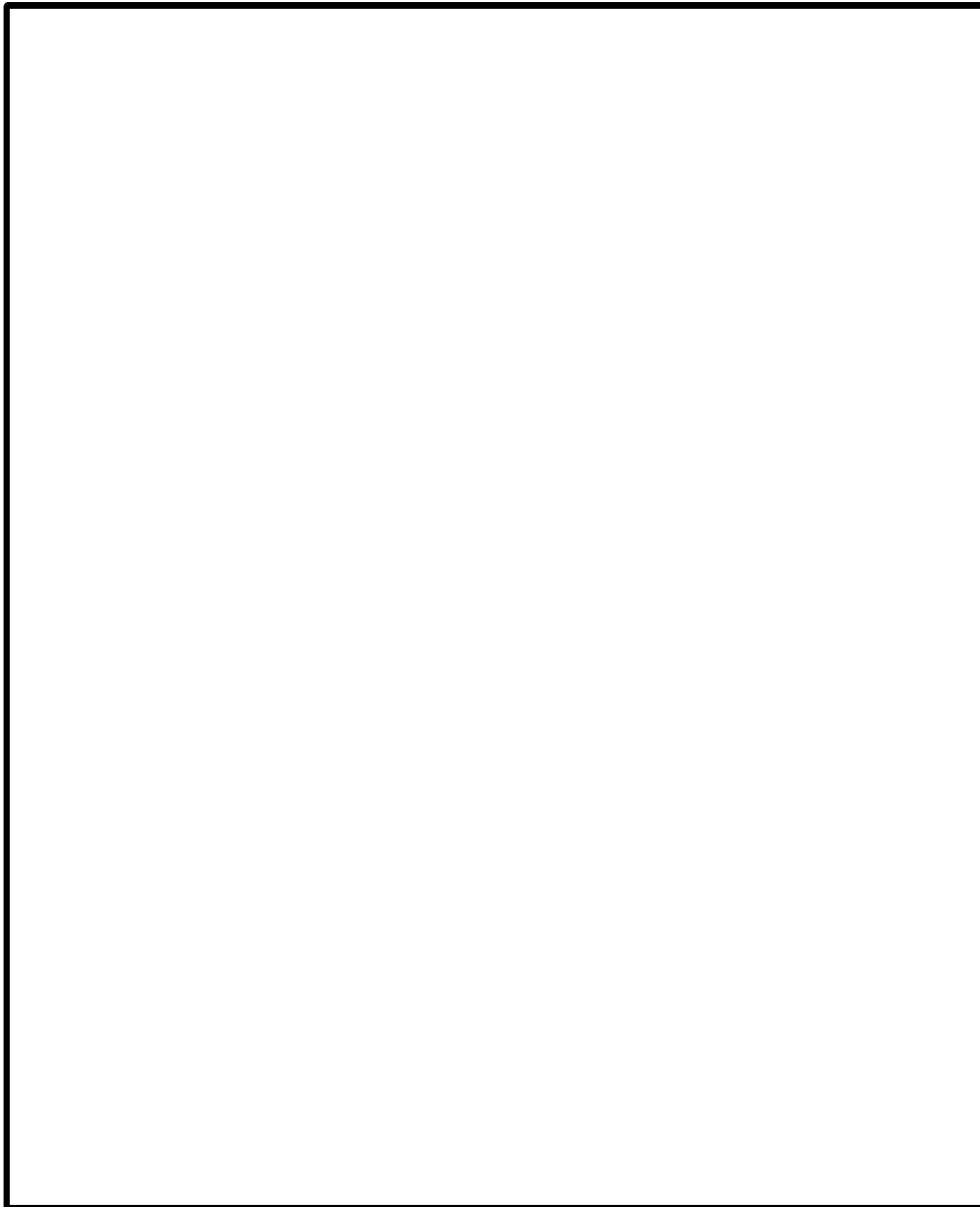
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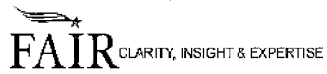
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ATTORNEY WORK PRODUCT**

From: Bob Dane <bdane@fairus.org>
Sent: Monday, October 23, 2017 2:44 PM
To: Law, Robert T
Subject: Bob Dane Question

Rob

Did you do a written exit interview?

Bob Dane
Executive Director
Federation for American Immigration Reform
25 Massachusetts Avenue, NW, Suite 330
Washington, DC 20001
(202) 328-7004 | FAIRus.org



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From: RJ Hauman <rjhauman@fairus.org>
Sent: Tuesday, October 24, 2017 10:00 AM
To: Law, Robert T
Subject: DACA Replacement Chart
Attachments: Factsheet_DACA Dream RAC Succeed Comparison.pdf

We are in the process of adding the Bridge Act. Working through format issues. Will shoot that over when it is done.

RJ Hauman
Government Relations Director



25 Massachusetts Ave. N.W., Suite 330
Washington, DC 20001
Tel: (202) 328-7004
Fax: (202) 387-3447
www.FAIRus.org

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Legislative Options to Replace DACA

	DACA	DREAM Act (S.1615)	RAC Act (H.R.1053)	SUCCEED Act (S.1852)
Population Potentially Eligible for Amnesty	723,000* (690,000 approved; 33,000 pending, no new applications accepted) <i>*Source: Department of Homeland Security data</i>	3,338,000* (1,813,000 immediately eligible for conditional status; 1,526,000 may become eligible for conditional status in the future) <i>*Source: Migration Policy Institute estimate</i>	2,504,000* (1,061,000 immediately eligible for conditional status; 1,444,000 may become eligible for conditional status in the future) <i>*Source: Migration Policy Institute estimate</i>	2,553,000* (1,816,000 immediately eligible for conditional status; 737,000 may become eligible for conditional status in the future) <i>*Source: Niskanen Center estimate</i>
Age at Arrival	16	18	16	16
Upper Age Limit	36 (under 31 on June 15, 2012)	None	None	36 (under 31 on June 15, 2012)
Continuous Presence Requirements	<p>Must have lived continuously in the U.S. since June 15, 2007. Must have been physically present in the U.S. on June 15, 2012.</p> <p>May have traveled outside the U.S. between June 15, 2007, and August 15, 2012, so long as the time outside the U.S. is considered brief, casual, and innocent.</p>	<p>Must have been continuously present in the U.S. for 4 years at the date of enactment.</p> <p>May not have left the U.S. for any period exceeding 90 days or for any periods exceeding 180 days total. However, these limits can be extended if the failure to return is due to "extenuating circumstances."</p> <p>Travel authorized by DHS (advance parole) is not counted as a departure from the U.S. Being served a Notice to Appear does not terminate continuous presence.</p>	<p>Must have been continuously present in the U.S. since January 1, 2012.</p> <p>May not have left the U.S. for any period exceeding 90 days or for any periods exceeding 180 days total. However, these limits can be extended if the failure to return is due to "extenuating circumstances." Travel authorized by DHS (advance parole) is not counted as a departure from the U.S.</p> <p>Being served a Notice to Appear does not terminate continuous presence.</p>	<p>Must have been continuously present in the U.S. since June 15, 2012.</p> <p>May not have left the U.S. for any period exceeding 90 days or for any periods exceeding 180 days total during a 5-year period. However, these limits can be extended if the failure to return is due to "exceptional circumstances."</p> <p>Time spent outside of the U.S. due to active service in the U.S. Armed Forces does not terminate continuous presence.</p> <p>Being served a Notice to Appear does not terminate continuous presence.</p>

	DACA	DREAM Act (S.1615)	RAC Act (H.R.1468)	SUCCEED Act (S.1852)
Immigration Status Requirements	<p>Must not have had lawful immigration status on June 15, 2012.</p> <p>Illegal aliens with final orders of removal are still eligible to apply.</p>	<p>Anyone without lawful immigration status can qualify, including illegal aliens with final orders of removal.</p> <p>Also, illegal aliens with DACA and temporary protected status (TPS) may apply.</p>	<p>Must not have a final order of exclusion, deportation, or removal. Exceptions are illegal aliens who (1) remained in the U.S. after the order was issued, or (2) received the order before turning 18.</p> <p>Illegal alien children of E-2 treaty investors eligible for amnesty program.</p>	<p>Must not have a final order of exclusion, deportation, or removal. Exceptions are illegal aliens who (1) remained in the U.S. after the order was issued, or (2) received the order before turning 18.</p>
Criminal Background Requirements	<ul style="list-style-type: none"> • Have not been convicted of a felony offense. • Have not been convicted of a significant misdemeanor (domestic violence, sexual abuse/exploitation, burglary, unlawful possession or use of a firearm, drug distribution/trafficking, DUI, or a sentence of 90 days in custody); or • Three or more misdemeanors occurring on separate dates from separate acts. 	<ul style="list-style-type: none"> • Have not been convicted of a felony offense (excluding state immigration-related offenses). • Have not been convicted of 3 or more misdemeanors occurring on separate dates from separate acts (excluding State immigration-related offenses) and imprisonment of an aggregate 90 days or more. • Inadmissible for criminality*, national security risk, smuggling*, student visa abuse*, permanent ineligibility for citizenship (draft evaders), polygamy, international child abduction, or unlawful voting*; or • Ordered, incited, assisted, or participated in persecution. • Expunged convictions will be evaluated on a case-by case basis <p><i>*Waivable for humanitarian purposes, family unity, or public interest</i></p>	<ul style="list-style-type: none"> • Must meet the moral character definition under the INA. • Have not been convicted of a felony offense. • Have not been convicted of multiple misdemeanors for which a sentence of more than one year was imposed. • Inadmissible for criminality*, national security risk, smuggling*, student visa abuse*, permanent ineligibility for citizenship (draft evaders), polygamy, international child abduction, or unlawful voting*; or • Ordered, incited, assisted, or participated in persecution. <p><i>*Waivable for humanitarian purposes, family unity, or public interest</i></p>	<ul style="list-style-type: none"> • Must meet the moral character definition under the INA. • Have not been convicted of a felony offense. • Have not been convicted of multiple misdemeanors for which a sentence of more than one year was imposed. • Have not been convicted of a significant misdemeanor as defined in the bill. • Inadmissible for criminality*, national security risk, smuggling*, student visa abuse*, permanent ineligibility for citizenship (draft evaders), polygamy, international child abduction, or unlawful voting*; or • Ordered, incited, assisted, or participated in persecution. <p><i>*Waivable for humanitarian purposes or public interest</i></p>

	DACA	DREAM Act (S.1615)	RAC Act (H.R.1468)	SUCCEED Act (S.1852)
Education/ Work/Military Service Requirements	<ul style="list-style-type: none"> • Currently in high school; • Graduated high school; • Obtained a GED; or • Honorable discharge from the Coast Guard or Armed Forces of the U.S. 	<ul style="list-style-type: none"> • Admitted to an institution of higher education in the U.S.; • Graduated high school; • Obtained a GED; or • Enrolled in secondary school or an education program assisting students in- <ul style="list-style-type: none"> ○ Obtaining a high school diploma; or ○ Passing a GED exam, high school diploma exam, or other similar state-authorized exam. <p>NOTE: Illegal alien minors who are at least 5 years old and enrolled in school are exempt from immigration enforcement so they can age into the amnesty program.</p>	<ul style="list-style-type: none"> • Admitted to an institution of higher education in the U.S.; • Graduated high school; • Obtained a GED; or • Enrolled in secondary school or an education program assisting students in- <ul style="list-style-type: none"> ○ Obtaining a high school diploma; or ○ Passing a GED exam, high school diploma exam, or other similar state-authorized exam; or • Has a valid work authorization. 	<ul style="list-style-type: none"> • If 18 years of age or older: • Admitted to an institution of higher education in the U.S.; • Graduated high school; • Obtained a GED; or • Enrolled in secondary school or an education program assisting students in- <ul style="list-style-type: none"> ○ Obtaining a high school diploma; or ○ Passing a GED exam, high school diploma exam, or other similar state-authorized exam; or • Has served, is serving, or has enlisted in the U.S. Armed Forces. • If younger than 18 years of age: • Attending or has enrolled in a primary or secondary school; or • Attending or has enrolled in a post-secondary school.
Path to Citizenship	<p>No. However, 39,514 illegal aliens have received legal permanent residence (green card) through the advance parole loophole, and 1,056 adjusted to U.S. citizenship.</p>	<p>Yes, eligible for citizenship in at least 13 years.</p> <p>Step 1: Apply for conditional permanent residency, valid for 8 years (requirements in rows above).</p> <p>Step 2: After 8 years of conditional permanent residency, individuals can apply for legal permanent residency if they have done one of the following*:</p> <ul style="list-style-type: none"> • Acquired a degree from an institution of higher education; or • Completed at least 2 years in a bachelor's degree program; or • Served for at least 2 years in the 	<p>Yes, eligible for citizenship in at least 10 years.</p> <p>Step 1: Apply for conditional permanent residency, valid for 5 years (requirements in rows above).</p> <p>Step 2: After the initial 5 year period, individuals can reapply to extend conditional permanent residency for another 5 years if they have fulfilled one of the following:</p> <ul style="list-style-type: none"> • Enrolled in an accredited U.S. institution of higher education within one year after obtaining conditional permanent residency, and remain enrolled; or 	<p>Yes, eligible for citizenship in at least 15 years.</p> <p>Step 1: Apply for conditional permanent residency, valid for 5 years (requirements in rows above).</p> <p>Step 2: After the initial 5 year period, individuals can reapply to extend conditional permanent residency for another 5 years if they have fulfilled one of the following:</p> <ul style="list-style-type: none"> • Graduated from an accredited U.S. institution of higher education; or • Attended a postsecondary school for not less than 8 semesters; or • Served for at least 3 years in the

	DACA	DREAM Act (S.1615)	RAC Act (H.R.1468)	SUCCEED Act (S.1852)
		<p>U.S. armed forces or have been honorably discharged; or</p> <ul style="list-style-type: none"> Employed for periods totaling at least 3 years, at least 75 percent of which time was working with valid employment authorization (if the person was not working, they must show that they were enrolled in school or an education program). <p><i>*Waivable for hardship</i></p> <p>Step 3: May apply for U.S. citizenship after 5 years as a legal permanent resident.</p>	<ul style="list-style-type: none"> Employed for a total period of 48 months during the 5 year period since obtaining conditional permanent residency; or Enlisted in the U.S. armed forces within 9 months of obtaining conditional permanent residency. <p>Step 3: After receiving the additional 5-year extension, an individual is immediately eligible to apply for legal permanent residency.</p> <p>Step 4: May apply for U.S. citizenship after 5 years as a legal permanent resident.</p>	<p>U.S. Armed Forces or have been honorably discharged; or</p> <ul style="list-style-type: none"> Attended a postsecondary school, served in the U.S. Armed Forces, or maintained employment for a total period of 48 months during the 5 year period since obtaining conditional permanent residency. <p>Step 3: After maintaining conditional permanent resident status for 10 years, an individual may apply for legal permanent residency.</p> <p>Step 4: May apply for U.S. citizenship after 5 years as a legal permanent resident.</p>
Chain Migration	Aside from those who took advantage of the advance parole loophole, DACA aliens are not currently eligible for green cards, and therefore cannot sponsor family members.	Once in full legal permanent resident status, immediately eligible to sponsor family members for green cards, INCLUDING illegal alien parents who brought these aliens to the U.S. when they were minors.	Once in full legal permanent resident status, immediately eligible to sponsor family members for green cards, INCLUDING illegal alien parents who brought these aliens to the U.S. when they were minors.	Individuals in legal permanent resident status are barred from sponsoring family members for green cards. However, they can do so once they become citizens.
Chain Migration Impact* <i>*Up to 3.45 relatives per amnestied alien (Center for Immigration Studies)</i>	2,494,000 (This number reflects a potential legislative amnesty for the DACA population)	11,516,000	8,639,000	8,808,000

	DACA	DREAM Act (S.1615)	RAC Act (H.R.1468)	SUCCEED Act (S.1852)
Documentation Required	An extensive list is included, but “any other document [the alien believes] is relevant” is also considered.	An extensive list is included, but there is no requirement that the documentation be verifiable despite the prevalence of illegal immigration-related document fraud and identity theft.	Submission of biometric and biographic data required. No list of eligible documents included meaning illegal alien applicants can submit whatever they want to “prove” eligibility.	Submission of biometric and biographic data required. No list of eligible documents included meaning illegal alien applicants can submit whatever they want to “prove” eligibility.
Fees/fines Required	No fine or penalty for unlawful presence. \$495 fee, which consists of a \$410 fee for the Employment Authorization Document (EAD) application and an \$85 fee for fingerprints.	No fine or penalty for unlawful presence. Application fees to be determined by DHS* <i>*Waivable for qualifying individuals</i>	No fine or penalty for unlawful presence. Application fees to be determined by DHS* Satisfy all assessed tax liabilities. Not required to pay back taxes for undeclared income. <i>*Waivable for qualifying individuals</i>	No fine or penalty for unlawful presence. Application fees to be determined by DHS Satisfy all assessed tax liabilities. Not required to pay back taxes for undeclared income.

From: Law, Robert T
Sent: Tuesday, October 24, 2017 1:33 PM
To: RJ Hauman
Subject: RE: DACA Replacement Chart

Thanks. I see you didn't waste time updating your signature line.

From: RJ Hauman [mailto:rjhauman@fairus.org]
Sent: Tuesday, October 24, 2017 11:00 AM
To: Law, Robert T
Subject: DACA Replacement Chart

We are in the process of adding the Bridge Act. Working through format issues. Will shoot that over when it is done.

RJ Hauman
Government Relations Director



25 Massachusetts Ave. N.W., Suite 330
Washington, DC 20001
Tel: (202) 328-7004
Fax: (202) 387-3447
www.FAIRus.org

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From: Law, Robert T
Sent: Thursday, November 02, 2017 3:01 PM
To: hr@fairus.org
Subject: One last student loan form
Attachments: Robert Law PSLF (FAIR).pdf

Hi Hemant,

I hope you're doing well. Can you please fill out Section 3, line 2 (EIN) and Section 4 to certify my eligibility for student loan forgiveness. I need this one last time from you to show my date of separation from FAIR. Password to follow.

Thanks and I hope to see you and everyone soon!

Robert Law
Senior Advisor
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
202-272-8409 (work)
(b)(6) (cell)

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PSLF ECF

PUBLIC SERVICE LOAN FORGIVENESS (PSLF): EMPLOYMENT CERTIFICATION FORM

William D. Ford Federal Direct Loan (Direct Loan) Program

WARNING: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097.

OMB No. 1845-0110

Form Approved

Exp. Date 5/31/2020

PSECF - XBCR

SECTION 1: BORROWER INFORMATION

(b)(6)

Name Robert Thomas Law

Borrower Name **Robert Thomas Law**

(b)(6)

From: Law, Robert T
Sent: Thursday, November 02, 2017 3:01 PM
To: hr@fairus.org
Subject: RE: One last student loan form

PSLF

From: Law, Robert T
Sent: Thursday, November 02, 2017 4:01 PM
To: 'hr@fairus.org'
Subject: One last student loan form

Hi Hemant,

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Thanks and I hope to see you and everyone soon!

Robert Law
Senior Advisor
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
202-272-8409 (work)
(b)(6) (cell)

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From: Human Resources <HR@FAIRUS.ORG>
Sent: Thursday, November 02, 2017 3:25 PM
To: Law, Robert T
Subject: RE: One last student loan form
Attachments: ROB.PDF

Hi Rob,

I am doing good. Thanks. Hope you doing wonderful too !

Attached is the signed and completed form as you requested.

Have a great one !!

Hemant Sharma
Staff Accountant



25 Massachusetts Ave. N.W. Suite 330 | Washington, DC 20001
Office 202.328.7004 | Fax 202.328.3447

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From: Law, Robert T
Sent: Thursday, November 02, 2017 4:01 PM
To: 'hr@fairus.org'
Subject: One last student loan form

Hi Hemant,

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Thanks and I hope to see you and everyone soon!

Robert Law
Senior Advisor
Office of Policy & Strategy

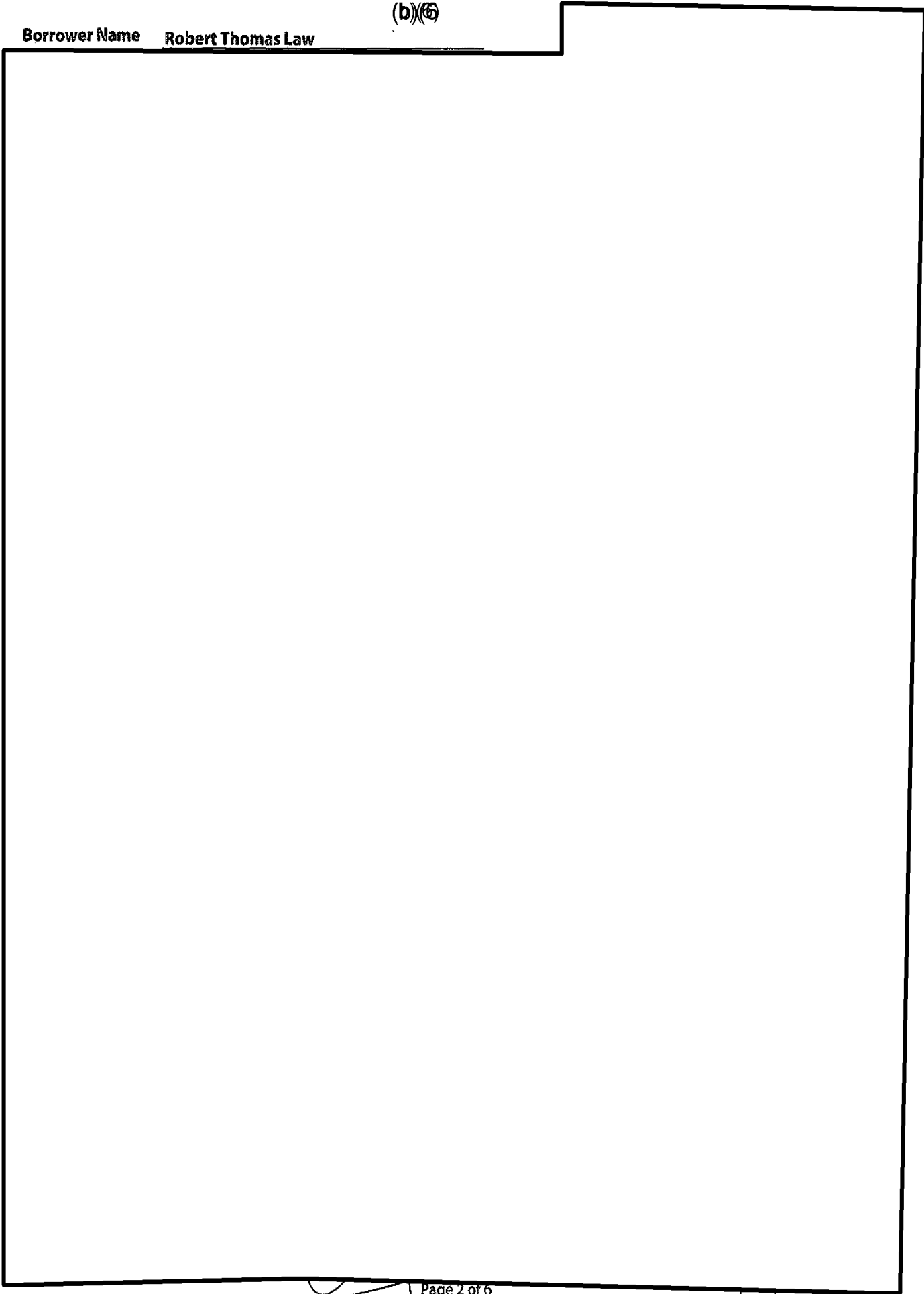
U.S. Citizenship and Immigration Services
Department of Homeland Security
202-272-8409 (work)

(b)(6) [REDACTED] (cell)

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Borrower Name Robert Thomas Law



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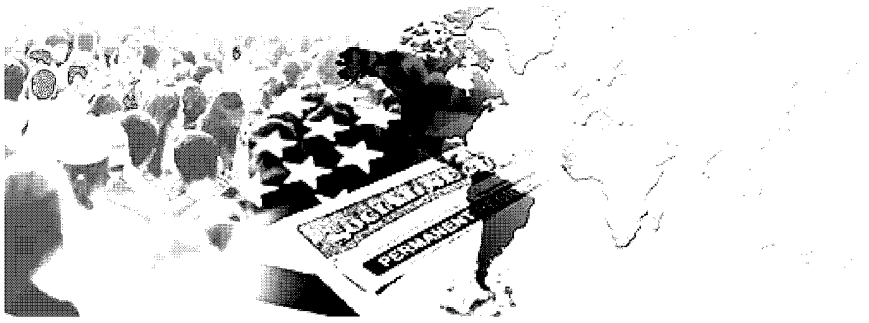
From: Shari Rendall <srendall@fairus.org>
Sent: Tuesday, November 28, 2017 12:59 PM
To: Law, Robert T
Subject: State E-Verify Laws
Attachments: States with laws or executive orders requiring use of E-Verify (update) (2).docx

Rob,

There are a few additions to the document above:

(b)(6)

(b)(6)



States with Laws or Executive Orders Requiring or Encouraging the Use of E-Verify

STATE	BILL #	YEAR OF ENACTMENT	DESCRIPTION
Alabama	<u>HB 56</u>	2011	<p>Summary: All public and private employers, including contractors and subcontractors, must use E-Verify beginning Apr. 1, 2012. Contractors and subcontractors with state and local governments must comply by Jan. 1, 2012.</p> <p>Penalties for noncompliance: After a first violation, employer will be subject to debarment from state contracts and subject to cancellations of state grants or incentives. The employer may also be subject to suspension or revocation of their business license for up to 60 days. After a second or subsequent offense, employer may be subject to a permanent business license revocation.</p>
	<u>HB 658</u>	2012	<p>Summary: Amends HB 56 process by which a public contractor is found to be in violation of the law and changes penalties that may be imposed upon the public contractor for violations. Expands definition of subcontractor to include an employer who is awarded a portion of an existing contract, regardless of its tier.</p> <p>Penalties for noncompliance: Creates new penalty scheme for contractors in violation of E-Verify requirement. Upon the first violation, employer is subject to a three-year probationary period. During the probationary period, employer must file quarterly reports ensuring compliance and file affidavit affirming that the employment of any unauthorized alien employees have been terminated. Employer will also be subject to a suspension of all business licenses and permits for up to 60 days. Employer must file an affidavit affirming E-Verify use in order to have business licenses and permits reinstated. After a second violation, employer shall be deemed in breach of contract with the public entity. The employer must terminate employment of all unauthorized aliens and the employer is subject to a five-year probationary period. During the probationary period, the employer must submit quarterly reports demonstrating compliance with E-Verify requirements. Employer must also</p>

submit affidavit stating the employer has terminated employment of all unauthorized workers. Additionally, all business licenses and permits will be suspended for 60-120 days in the location where the unauthorized employment occurred. Employer must submit sworn affidavit stating compliance before the employer's licenses or permits may be reinstated. After a third violation, employer will be found in breach of contract and will be subject to permanent revocation of business licenses and permits.

A safe harbor from liability is provided to employers that enroll in E-Verify and properly use the program.

Arizona HB 2779 2007

Summary: Prohibits employers from intentionally/knowingly hiring unauthorized workers and requires all employers to use E-Verify after December 31, 2007.

Penalties for noncompliance: Employers are not subject to penalties for failure to use E-Verify. Businesses that knowingly hire unauthorized aliens may face possible license suspension for a first violation and permanent revocation for a second violation.

HB 2745 2008

Summary: State and local governments shall not contract with contractors or subcontractors who do not use E-Verify.

Penalties for noncompliance: Employers are not subject to penalties for failure to use E-Verify. Businesses that knowingly hire unauthorized aliens may face possible license suspension for a first violation and permanent revocation for a second violation.

Colorado HB 1343 2006

Summary: Prospective state and local contractors must certify they do not knowingly employ or contract with an unauthorized alien and that they use or have attempted to use E-Verify (effective August 9, 2006).

Penalties for noncompliance: A public contractor that fails to use E-Verify may be deemed in breach of contract with the public entity and liable for costs related to the termination of the contract. If a contractor found to be in violation of the requirements, the Secretary of State must include the employer on a list of noncomplying employers, which must be published on the internet.

SB 193 2008

Summary: Contractors with state contracts must use E-Verify.

Penalties for noncompliance: A public contractor that fails to use E-Verify may be deemed in breach of the contract with the public entity and liable for costs related to termination of contract. If a

contractor is found to be in violation, the Secretary of State must include the employer on a list of noncomplying employers, which must be published on the internet. Public contractors are subject to random audits by the Department of Labor and Employment.

SB 139 2008

Summary: The Department of Labor and Employment must notify employers of the prohibition against hiring unauthorized aliens and the availability and participation requirements of E-Verify.

Penalties for noncompliance: None.

Florida Executive Order 11-116 2011

Summary: Agencies under the direction of the governor, including contractors and subcontractors, must use E-Verify (supersedes Executive Order 11-02).

Penalties for noncompliance: None.

Georgia SB 529 2006

Summary: All public employers, contractors and subcontractors with 500 or more employees must use E-Verify by July 1, 2007. All contractors and subcontractors with 100 or more employees must use E-Verify by July 1, 2008. All employers must use E-Verify by July 1, 2009.

Penalties for noncompliance: None.

SB 447 2010

Summary: All public employers must maintain state contractor affidavits affirming participation in E-Verify for five years. All contractors are required to notify public employers of any new subcontractors.

Penalties for noncompliance: Commissioner must conduct a minimum of 100 random audits of public employers and contractors. Results of audits must be published on state website. Knowing or willful false statements in affidavit result in violation of false statements and writings crime and will also result in a prohibition from entering into a public contract for 12 months following conviction.

HB 87 2011

Summary: Requires all private employers with more than 10 employees to use E-Verify by July 1, 2013.

Penalties for noncompliance: Private employers are required to sign an affidavit affirming use of E-Verify to receive business license. Localities that violate E-Verify requirements may be disqualified from eligibility for state grants or loans and other state programs. Contractors found to be in violation shall be included on a list of noncomplying employers on a state website.

Idaho	<u>Executive Order 2009-10</u>	2009	<p>Summary: State agencies receiving state funds or federal stimulus money shall verify individuals are eligible to work in the United States. Contractors and subcontractors must declare to contracting state agency that all employees associated with contract are work authorized.</p>
Indiana	<u>SB 590</u>	2011	<p>Summary: Requires state and local employers, contractors, and subcontractors to use E-Verify by July 2011.</p> <p>Penalties for noncompliance: Contractors in violation may be deemed in breach of contract and have contract terminated. Private employers are not required to use E-Verify but will not be able to deduct employee wages from their state income taxes if they do not enroll in the program.</p>
Kansas	<u>Secretary of State Order</u>	2011	<p>Summary: Requires the Kansas Department of State to use E-Verify to verify the work authorization of newly hired employees.</p> <p>Penalties for noncompliance: None.</p>
Louisiana	<u>HB 342</u>	2011	<p>Summary: Contractors and subcontractors with state and local governments must use E-Verify.</p> <p>Penalties for noncompliance: Any employer found to be in violation may have its contract terminated and may be deemed ineligible for any public contract for up to three years. The employer will also be liable for any additional costs incurred by the public entity because of the cancellation of the contract. Safe harbor provided to employers who use E-Verify from liability for hiring an unauthorized alien.</p>
	<u>HB 646</u>	2011	<p>Summary: Private employers must either use E-Verify, or use and retain copies of certain identity and work authorization documents.</p> <p>Penalties for noncompliance: None.</p>
	<u>HB 996</u>	2012	<p>Summary: E-Verify is required for public works contracts that erect, construct, change, improve, or repair any public facility or immovable property owned, used, or leased by a public entity.</p> <p>Penalties for noncompliance: None.</p>
Michigan	<u>HB 5294</u>	2016	<p>Summary: Requires Department of Transportation and Department of Human Services contractors and subcontractors to use E-Verify.</p> <p>Penalties for noncompliance: Noncompliance may result in funding consequences. Requires Department of Transportation to</p>

submit to the House and Senate Appropriations Committees and the House and Senate fiscal agencies an annual report describing the processes it has developed and implemented in compliance with the E-Verify requirements.

Mississippi SB 2988 2008

Summary: Requires all public and private employers to use E-Verify.

Penalties for noncompliance: Creates a safe harbor for employers that comply with E-Verify requirements, unless an employer is directly involved in the creation of false documents, and provided the employer did not knowingly or willfully accept false documents. Contractors in violation will be subject to the cancellation of any public contract and will be ineligible for public contracts for up to three years. Contractors will also lose any license or permit to do business in Mississippi for up to one year. Contractors may also be liable for any additional costs incurred because of the cancellation of a contract as a result of their failure to comply with E-Verify requirements.

Missouri HB 1549 2008

Summary: Public employers and business entities receiving a state contract, grant in excess of \$5,000, or a state-administered tax credit, tax abatement, or loan, must use E-Verify.

Penalties for noncompliance: No penalty for failure to use E-Verify. Business license penalties associated with the knowing employment of unauthorized workers. Contractors guilty of knowingly employing unauthorized workers may have contract terminated and may be debarred from contracting with public entities for three years. Safe harbor provided to employers who use E-Verify from penalties associated with employment of unauthorized workers.

Nebraska LB 403 2009

Summary: Public employers and contractors must use E-Verify (effective October 2009).

Penalties for noncompliance: The Tax Commissioner is prohibited from approving any tax incentive for an employer unless the employer uses E-Verify.

New Hampshire HB 158 2012

Summary: E-Verify use is not required in New Hampshire. However employers who use E-Verify are shielded with an affirmative defense to identity fraud actions.

Penalties for noncompliance: No penalties for failure to use E-Verify. Safe Harbor created for identity fraud actions for employers who choose to utilize the program.

North Carolina SB 1523 2006

Summary: Requires each State agency, department, institution, university, community college, and local education agency to use E-Verify.

Penalties for noncompliance: None.

HB 36 2011

Summary: Private employers with 25 or more employees must use E-Verify by July 1, 2013. Seasonal employees working 90-days or less annually are exempt from verification. Counties and municipalities are also required to use E-Verify.

Penalties for noncompliance: After a first violation, an employer must sign a sworn affidavit affirming usage with E-Verify or become subject to a civil penalty of \$10,000. After a second violation, the employer shall pay a penalty of \$1,000. After a third or subsequent violation, the employer must pay a \$2,000 penalty for each required employee verification the employer failed to make.

HB 318 2015

Summary: Requires public contractors and subcontractors to use E-Verify. E-Verify requirements do not apply to contracts solely for the purchase of goods, apparatus, supplies, materials, or equipment.

Penalties for noncompliance: None.

Oklahoma HB 1804 2007

Summary: Public employers, including contractors and subcontractors, must use E-Verify, the Social Security Number Verification Service, or other similar reliable, including third-party, employment eligibility verification program.

Penalties for noncompliance: No penalties for failure to use E-Verify. Creates a safe harbor for employers who use E-Verify from penalties associated with unlawfully discharging an U.S. citizen or permanent resident alien while retaining an unauthorized alien employee.

Pennsylvania SB 637 2012

Summary: All public works contractors and subcontractors with contracts worth at least \$25,000 must use E-Verify.

Penalties for noncompliance: First violation results in a warning and posting on a state website. A second violation requires a 30-day debarment from public works contracts, and a third violation requires between 180 and 365 days debarment from public works contracts. Willful violators may be debarred for up to 3 years and subject to a fine between \$250 and \$1000. Provides a safe harbor from liability to employers who use E-Verify in good faith.

South Carolina HB 4400 2008

Summary: Requires all public and private employers to either use E-Verify or check the validity of driver's license and other identification.

Penalties for noncompliance: Civil penalties; subsequently repealed and amended to revoke business licenses by SB 20.

SB 20 2011

Summary: All employers must use E-Verify by January 1, 2012.

Penalties for noncompliance: SB 20 imputes a state business license to all employers in the state. Employers who violate the state's E-Verify requirements will be placed on probation for one year during which the employer must submit quarterly reports demonstrating compliance with E-Verify requirements. All subsequent violations will result in the suspension of the employer's state employment license for 10-30 days and the state must verify the work authorization status of the employer's employees. If an employer has not been found in violation of E-Verify requirements in the past three years, a violation will be treated as a first occurrence. Employers may also be subject to licensing penalties associated with the employment of unauthorized workers.

Tennessee

HB 1378 2011

Summary: All public employers and all private employers with six or more employees are required to use E-Verify (to be phased in by 2013).

Penalties for noncompliance: First violation results in a \$500 fine. Second violation results in a \$1000 fine. All subsequent violations will result in a \$2500 fine. Additionally, employers must pay a \$500 fee for each employee whose work authorization was not verified properly on the first offense, an additional \$1000 per employee on the second offense, and an additional \$2500 per employee for each subsequent offense. If an employer fails to certify compliance within 60 days, the employer's business license will be suspended until the employer submits evidence of compliance.

HB 1830 2016

Summary: Amends the Tennessee Lawful Employment Act and requires private employers with 50 or more employees to use E-Verify, beginning Jan. 1, 2017. Removes a loophole that allowed employers to avoid using E-Verify as long as they retained copies of certain employee documentation.

Penalties for noncompliance: Adds a \$500 per day of noncompliance penalty to previous penalty scheme.

Texas

Executive Order RP-80 2014

Summary: Requires state agencies and their contractors and subcontractors to use E-Verify. Encourages agencies not under the direction of the governor to use E-Verify and to require contractors to use E-Verify to verify employment eligibility of employees and subcontractors.

Penalties for noncompliance: None.

	<u>SB 374</u>	2015	<p>Summary: Requires all state agencies and state institutions of higher education to use E-Verify beginning in September 1, 2015.</p> <p>Penalties for noncompliance: None.</p>
Utah	<u>SB 81</u>	2008	<p>Summary: Public employers, including contractors and subcontractors, must use E-Verify, the Social Security Number Verification Service, or other similar reliable, including third-party, employment eligibility verification program.</p> <p>Penalties for noncompliance: No specified penalties for noncompliance. Creates a safe harbor by exempting employers using E-verify on or after July 2009 from liability, investigation, or lawsuit arising from this section.</p>
	<u>SB 251</u>	2010	<p>Summary: Private employers who employ 15 or more employees must use E-Verify, the Social Security Number Verification Service, or other similar reliable, including third-party, employment eligibility verification program.</p> <p>Penalties for noncompliance: No specified penalties for noncompliance. Creates safe harbor for private employers from civil liability under state law in cases of unlawful hiring of an unauthorized alien or refusal to hire an individual pursuant to their E-Verify status indication.</p>
Virginia	<u>HB 737</u>	2010	<p>Summary: State agencies must use E-Verify beginning Dec. 1, 2012.</p> <p>Penalties for noncompliance: None.</p>
	<u>HB 1859/SB 1049</u>	2011	<p>Summary: State contractors with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any state agency must use E-Verify beginning Dec. 1, 2013.</p> <p>Penalties for noncompliance: Any employer that fails to comply with these requirements shall be debarred from contracting with an agency of the Commonwealth for up to one year. Debarment period ceases upon an employer's enrollment and use of E-Verify.</p>
West Virginia	<u>SB 659</u>	2012	<p>Summary: All employers that have employees working on the grounds or in buildings of the Capitol Complex area, or have access to sensitive or critical information, must use E-Verify.</p> <p>Penalties for noncompliance: None.</p>

Last updated: October 2016

From: Bob Dane <bdane@fairus.org>
Sent: Wednesday, November 29, 2017 2:43 PM
To: Law, Robert T
Subject: RE: CIS Ombudsman Seventh Annual Conference

Thanks Rob. I'll be attending.

Bob Dane
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From: Law, Robert T [mailto:robert.t.law@uscis.dhs.gov]
Sent: Tuesday, November 28, 2017 12:07 PM
To: Bob Dane <bdane@fairus.org>; Dale Wilcox <dwilcox@irli.org>
Subject: CIS Ombudsman Seventh Annual Conference

Hey Bob/Dale,

Flagging for your attention next week's CIS Ombudsman's conference. It would be great to have a FAIR/IRLI presence since AILA has been heavily promoting. Registration will likely be cut off on Dec. 6, the day before the Dec. 7 conference. The agenda hits two major issues of interest: E-Verify and H-1B. Happy to discuss further.

-Rob

202-272-8409



Homeland Security

Citizenship and Immigration Services Ombudsman

November 28, 2017

Seventh Annual Conference

Washington, D.C.

December 7, 2017

9:00 am – 4:30 pm

Dear Stakeholder:

Please join the Office of the Citizenship and Immigration Services Ombudsman for our Seventh Annual Conference on December 7, 2017 at the National Archives in Washington, D.C.

The conference will feature keynote speakers in the morning session, including Acting Secretary of Homeland Security Elaine Duke and U.S. Citizenship and Immigration Services Director L. Francis Cissna, and panel discussions with federal officials and public stakeholders in the afternoon. This year's topics include the H-1B visa program, naturalization, background checks, E-Verify, and Transformation. The conference agenda is available [here](#).

The Ombudsman's Office, created by Congress in the Homeland Security Act of 2002, assists individuals and employers encountering difficulties with U.S. Citizenship and Immigration Services. In addition to our work on individual cases, we also make

recommendations to address systemic issues in the delivery of citizenship and immigration services. To learn more about our office, please visit our [website](#).

Please register for this conference using the link below. Registration is free!

Sincerely,

Office of the Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security


www.dhs.gov/cisombudsman



The Ombudsman hosts a monthly public teleconference series to share information about relevant topics and provide an opportunity to hear feedback from the community about issues related to the delivery of immigration benefits and services.



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Homeland
Security

From: Elizabeth Hohenstein <ehohenstein@irli.org>
Sent: Thursday, December 28, 2017 9:02 AM
To: Law, Robert T
Subject: OPT Comment
Attachments: IRLI Public Comment_ICEB-2015-0002_w Exs A&B_11-18-2015.pdf

Elizabeth Hohenstein
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*IRLI is a nonprofit public
interest law firm working to
end unlawful immigration and
to set levels of legal
immigration that are
consistent with the national
interest.*

*IRLI is a supporting
organization of the Federation
for American Immigration
Reform.*

November 18, 2015

Katherine Westerlund
Policy Chief (Acting)
Student and Exchange Visitor Program
U.S. Immigration and Customs Enforcement
500 W. 12th Street N.W.
Washington, DC 20536

**REF: DHS Docket No. ICEB-2015-0002, Notice of Proposed
Rulemaking: Improving and Expanding Training Opportunities for F-1
Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All
Eligible F-1 Students**

Public Comment of Immigration Reform Law Institute, Inc.

Dear Chief Westerlund:

The Immigration Reform Law Institute, Inc. ("IRLI") submits the following comments to the U.S. Department of Homeland Security ("DHS") in opposition to the subject Notice of Proposed Rulemaking ("NPRM"), as published in the Federal Register on October 15, 2015. *See* 80 F.R. 66376-63404.

IRLI is a non-profit public interest law organization that exists to defend the rights of individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful, to monitor and hold accountable federal, state, or local government officials who undermine, fail to respect, or comply with our national immigration and citizenship laws, and to provide expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public. IRLI is the only entity of its kind in the U.S. which focuses exclusively on the interests of U.S. citizens and their communities in the development of sound immigration policy and law.

Upon review, IRLI has concluded that the proposed rule is unlawful, because

(1) Congress delegated authority to define periods of employment for F-1 nonimmigrants to the Treasury Department, not DHS;

Page 2

- (2) Immigration and Nationality Act (“INA”) § 214(a)(1) does not delegate unlimited agency authority over conditions of admission for nonimmigrants to DHS;
- (3) DHS cannot claim discretionary authority over post-completion student employment from INA § 101(a)(15)(F) or § 274A(h)(3), alone or in combination;
- (4) the NPRM is procedurally and substantively arbitrary and capricious; and
- (5) the Optional Practical Training (“OPT”) program described in the NPRM would impermissibly facilitate prohibited employment-related discrimination on the basis of alienage and national origin.

Our comments focus on the lack of a basis in law for the agency’s claims of “broad authority” to implement the proposed rule, *see* 80 FR 63379-63381. NPRM ICEEB-2015-0002 is infected throughout with unlawful proposals. IRLI also endorses and adopts the policy-focused objections to the NPRM in public comments submitted by the Federation for American Immigration Reform (FAIR) and John Miano, Esquire.

(1) Congress delegated authority to define periods of employment for F-1 nonimmigrants to the Treasury Department, not DHS.

DHS claims in the NPRM summary that since 1947, Congress has “acquiesced” to its evolving interpretation of whether an alien student was authorized under the terms of an F-1 visa to be employed full-time by a third party after graduation from a full-time course of study. 80 F.R. 63379-80.

DHS is wrong. Congress “has directly addressed the precise question at issue.” *Mayo Fdn. for Medical Educ. & Research v. U.S.*, 562 U.S. 44, 53 (2011). The NPRM never mentions or references the detailed applicable laws governing the Federal Insurance Contributions Act (“FICA”), Federal Unemployment Tax Act (“FUTA”), or Social Security withholding. These statutory requirements in Title 26 (and Title 42) constitute a comprehensive congressional scheme to which DHS must defer when implementing practical training regulations for F-1 nonimmigrants.

The proposed agency policy authorizing graduates on F-1 visas to work full-time while exempt for FICA withholding directly conflicts with the Internal Revenue Code (“IRC”), the Social Security Act (“SSA”), and Supreme Court precedent. By unilaterally expanding the definition of a “student” to include both recent and former nonimmigrant college graduates employed full-time by any entity other than the sponsoring academic institution, the DHS NPRM would unlawfully exempt both the

alien and the employer out from payment of payroll taxes—thus directly penalizing the Social Security and Medicare trust funds.

First, FICA requires covered employees and employers to pay taxes on all "wages" employees receive, 26 U.S.C. §§ 3101(a), 3111(a), and defines "wages" to include "all remuneration for employment," § 3121(a). FICA then defines "employment" as "any service . . . performed . . . by an employee for the person employing him," 26 U.S.C. § 3121(b). FICA then excludes from taxation any "service performed in the employ of . . . a school, college, or university . . . if such service is performed by a student who is enrolled and regularly attending classes at [the school]." 26 U.S.C. § 3121(b)(10). Since 1951, the Treasury Department has construed the student exception to exempt from taxation students who work for their schools "as an incident to and for the purpose of pursuing a course of study." 16 Fed. Reg. 12474.

Second, the Social Security Act, which governs workers' eligibility for benefits, contains a corresponding student exception materially identical to § 3121(b)(10). *See* 42 U.S.C. § 410(a)(10).

Third, in 2004 the Treasury Department "determined that it was necessary to provide additional clarification of the term "student" as used in § 3121(b)(10), particularly with respect to individuals who perform "services that are in the nature of on the job training." 69 Fed. Reg. 8605 (2004). Pursuant to its statutory authority over the definition of employment and the classification of employees, the Treasury Department issued regulations providing that "[t]he services of a full-time employee"—which includes an employee normally scheduled to work 40 hours or more per week—"are not incident to and for the purpose of pursuing a course of study." 26 CFR § 31.3121(b)(10)-2(d)(3)(iii). The Department explained that this analysis "is not affected by the fact that the services . . . may have an educational, instructional, or training aspect." *Id.* The rule offers as an example a medical resident whose normal schedule requires him to perform services 40 or more hours per week, and concludes that the resident is *not* a student. This interpretation was reviewed and upheld by the Supreme Court. *See Mayo Foundation v. U.S.*, 566 U.S. 44, 49 (2011).

Fourth, not only does the IRC govern and regulate the classification of employment by students in general, it also expressly governs and regulates service performed by an F-1 status nonimmigrant. 26 U.S.C. § 3121 (19).¹ Subparagraph (19) excludes "service" by a foreign student—*i.e.*, a nonimmigrant alien in F-1 status—from the definition of "employment," but only if the service "is

¹"service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;"

Page 4

performed to carry out the purpose specified in subparagraph (F)....” Section 3306(c)(19) of Title 26 (the IRC), relating to exemption for FUTA, contains a similar exemption provision for aliens in a *bona fide* F-1 status.

Fifth, the legislative history of these exemption provisions is integrally linked to the legislative history of the F, J and M visas as codified under 8 U.S.C. § 1101(a)(15) of the INA. The immigration, employment and tax status of such aliens were systematically amended by Congress under the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. No. 87-256, 75 Stat. 527 (1961). The Senate Joint Committee report on the Act unequivocally states that service subsequent to completion of a course of study is to be deemed employment, for which FICA, Social Security and FUTA withholding on such compensation paid to F-1 visa-holders would henceforth be required:

Section 110 (e) [of the Mutual Educational and Cultural Exchange Act of 1961] amends section 3121 (b) of the Internal Revenue Code-relating to the definition of employment for purposes of the Federal Insurance Contributions Act (FICA)-and section 210 (a) of the Social Security Act. Nonresident aliens are now subject to the 3-percent FICA, or social security tax. Since they are temporarily in the United States, they scarcely have any expectation of realizing benefits from such a tax payment. Section 110 (e) exempts foreign students and exchange visitors from payment of FICA tax on amounts earned in performing services to carry out the purposes for which they were admitted, such as studying, teaching, or conducting research. If they are employed for other purposes, consequent payments would not be exempt. (This latter provision represents a modification of the similar sec. 110 (b) in the un-amended version of S. 1154.) Finally, the Social Security Act is amended specifically to deny social security benefits to those individuals, except insofar as they have contributed consequent to employment for purposes other than those governing their admission to the United States.

“Section 110 (f) amends section 3306 (c) of the code, relating to the definition of employment for purposes of the Federal Unemployment Tax Act. This amendment would relieve employers of the obligation to pay Federal unemployment taxes on the same services that are exempted from FICA tax by the preceding section 110 (e).”

S. Rep. No. 372, 87th Cong., 1st Sess. 22 (1961), *see also* 1961-2 C.B. 395, 410 (I.R.S. 1961) (emphasis added).

Read together, 26 U.S.C. § 3121(b)(10), 26 U.S.C. § 3121(b)(19), 26 U.S.C. § 3306(c)(19), 26 U.S.C. § 3306(q), and 42 U.S.C. § 410(a)(10) long ago displaced the extra-statutory “authority” now capriciously claimed by DHS in the NPRM to authorize graduates to engage in “employment” on F-1 visas “following completion of studies.” While 8 U.S.C. § 1372 delegates operation of the SEVIS information-collection program to DHS, *see* 80 F.R. 63380-81, no provision of SEVIS conflicts with or supersedes the controlling authority of the Internal Revenue Service (“IRS”) to define the conditions under which tax-exempt “service” related to practical training performed by an alien in F-1 status becomes taxable “employment.”²

To the extent that the proposed rule authorizes full-time post-completion employment for an employer other than the sponsoring academic institution, while permitting the employer to exempt the alien from withholding obligations otherwise mandated by Congress, the proposed rule would constitute unlawful government action under the Administrative Procedure Act (“APA”). 5 U.S.C. § 706(2)(A).

(2) INA § 214(a)(1) does not delegate unlimited agency authority over conditions of admission for nonimmigrants to DHS.

The NPRM summary claims that the

“INA provides the Secretary with broad authority to determine the time and conditions under which nonimmigrants, including F-1 students, may be admitted to the United States. 8 U.S.C. 1184(a)(1), INA section 214(a)(1).”

80 FR 63379. DHS’s evocation of § 214(a), as authority for the claim that DHS can administratively bestow employment authorization on F-1 student visa holders despite the statutory requirement that such aliens may only be admitted for so long as they are engaged in a full-time course of study, cannot be supported by reference to the “broad authority [delegated by Congress] to administer and enforce the nation’s immigration laws.” *See id.*

² To the extent it purports to authorize “in status” classification to all aliens in F-1 status who are “engaging in authorized practical training following completion of studies,” 8 C.F.R. § 214.2 (f)(5)(i) conflicts with the statutory language of 26 U.S.C. § 3121(b)(10), 26 U.S.C. § 3121(b)(19), 26 U.S.C. § 3306(c)(19), 26 U.S.C. § 3306(q), and 42 U.S.C. § 410(a)(10) and is thus unlawfully in excess of DHS agency authority, as are the proposed amendments to 8 C.F.R. § 214.2 in the current NPRM.

A constitutional delegation of powers requires that Congress state a policy or objective for the President to execute and also that it establish a standard or “intelligible principle” that makes clear when action is proper. *Star-Kist Foods, Inc., v. United States*, 275 F.2d 472, 480 (C.C.P.A. 1959); *Mast Indus. v. Regan*, 8 C.I.T. 214, 222 (Ct. Int’l Trade 1984). In this case, while INA section 214(a) “authorizes” the Attorney General (now DHS Secretary) to condition admission to the United States of an alien “for such time and under such regulations as the Attorney General may prescribe,” it also mandates that all such regulations must “insure that at the expiration of such time or upon failure to maintain the status under which he was admitted ... such alien will depart from the United States.” 8 U.S.C. § 1184(a)(1) (emphasis added). DHS regulatory authority over non-immigrant admissions under section 1184(a) is thus by no means purely discretionary, as incorrectly claimed in the NPRM, *see* 80 F.R. 63379. By its express terms the Secretary’s regulatory authority may be exercised only to *augment* statutory conditions of admission, in order to “insure” that the alien will leave the United States once the terms of temporary admission have been completed. INA § 214(a) thus constitutes a congressional *restriction* of its delegation to DHS under 8 U.S.C. § 1103(a)(3) of generic discretionary authority to issue immigration regulations. INA § 214(a) cannot be interpreted to delegate to the Secretary the power to waive, bypass or weaken this statutory standard in order to further a *non*-statutory policy objective, such as the goal of facilitating the marketing of U.S. university degree programs to foreign students announced in the subject NPRM.

Similarly, the DHS claim of “broad authority to administer and enforce the nation’s immigration laws” under 6 U.S.C. § 202, *see* 80 F.R. 63379, has twice been rejected by the Fifth Circuit, the only federal circuit court to assess § 202, and as a general principle by the Supreme Court. *Texas v. United States*, 787 F.3d 733, 760-761 (5th Cir. 2015) (“we do not construe the broad grants of authority in 6 U.S.C. § 202(5),³ 8 U.S.C. § 1103(a)(3), or § 1103(g)(2) as assigning unreviewable “decisions of vast ‘economic and political significance’ to an agency.”); *id.*, fn 90 (citing *Util. Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2444 (2014) (“When an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’” *Brown & Williamson*, 529 U.S. at 159, 120 S. Ct. 1291, 146 L. Ed. 2d 121, “we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’” *Id.* at 160.)

The Fifth Circuit’s recent decision affirming a preliminary injunction against implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”) program

³ “The Secretary . . . shall be responsible for . . . [e]stablishing national immigration enforcement policies and priorities.”

collects extensive authority on the limits of the general authority of DHS, beyond which DHS affirmative action is arbitrary. *See, e.g., Texas v. U.S.*, No. 15-40238 (5th Cir. Nov. 9, 2015), at 38-39 (“The mere fact that a statute grants broad discretion to an agency does not render the agency’s decisions completely unreviewable under the ‘committed to agency review by law’ exception unless the statutory scheme, taken together with other relevant materials, provides absolutely no guidance as to how that discretion is to be exercised.” *Perales v. Castillo*, 903 F.2d 1043, 1047 (5th Cir. 1990)); at 61-62 (reaffirming the applicability of *Utility Air Regulatory Group*, 134 S.Ct. at 2444 and *Brown & Williamson Tobacco Corp.*, 529, U.S. at 123)).

(3) DHS cannot claim discretionary authority over post-completion student employment from INA § 101(a)(15)(F) or § 274A(h)(3), either alone or in combination.

The NPRM summary asserts, “Federal agencies dealing with immigration have long interpreted section 101(a)(15)(F)(i) of the INA and related authorities to encompass on-the-job-training that supplements classroom training.” 80 F.R. 63379 (citing 12 F.R. 5355, 5357 (Aug. 7, 1947) and 38 F.R. 35425, 35426 (Dec. 28, 1973)).

This assertion is capriciously overbroad. Nowhere does the statutory definition of a *student* in the INA authorize or even suggest that it includes full-time employment for three years after completion of a course of study. 8 U.S.C. § 1101(a)(15)(f)(i). DHS is authorized to admit aliens as students subject to the following conditions: (1) The aliens must have a residence in a foreign country that they have no intention of abandoning; (2) they must be *bona fide* students; (3) they must be entering the United States temporarily; (4) they must be entering solely to pursue a course of study; and (5) that course of study must take place at an approved academic institution that will report when the alien terminates attendance. 8 U.S.C. § 1101(a)(15)(F)(i). These provisions unambiguously define a *student* as one who attends a specific, approved school. *Id.*

In 1981, amendments to INA § 101(a)(15)(F) restricted the locations in which aliens admitted in F-1 status could pursue “a full course of study.” Section 2(a)(1) of the INA Amendments of 1981 amended former section 101(a)(15)(F) of the Immigration Act by striking out the existing phrase “a course of study at an established institution of learning or other recognized place of study in the United States,” and substituting the phrase, “such a course of study at a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program.” Pub. L. No. 97-116, 95 Stat. 1611 (1981). Congress thus statutorily restricted agency authority to approve F-1-based service at an “other recognized place of study” that was *not* an “academic institution,” at least a decade before the extra-statutory agency expansions of the OPT programs that followed the Immigration Act of 1990.

The restriction of eligibility for F-1 classification to alien students who are enrolled in a full course of study at a recognized academic institution is consistent with statutes in other U.S. Code titles. *Compare*, 5 U.S.C. § 8101(17), 20 U.S.C. § 1070a-1(c), 26 U.S.C. § 3306(q), 30 U.S.C. § 902(g)(2)(C), 33 U.S.C. § 902(18), 42 U.S.C. § 402(d)(7), 42 U.S.C. § 12511(46) (all defining a *student* as one who attends a school)⁴ *with* 8 C.F.R. § 214.2(f)(5)(i) (DHS regulatory definition of F-1 student status adding the alternative “or engaging in authorized practical training following completion of studies” to the statutory definition of *student*).⁵

By authorizing non-student aliens to remain in the United States on student visas to work under a post-completion OPT program, the subject NPRM would exceed the agency’s statutory authority to admit foreign students. § 1101(a)(15)(F)(i).

The NPRM summary further claims, “The Secretary also has broad authority to determine which individuals are “authorized” for employment in the United States. 8 U.S.C. 1324a(h)(3).”

80 FR 63379. But DHS not only lacks the authority to allow aliens in F-1 status to remain in the United States absent a change or adjustment in status, it also has not been delegated the authority to authorize graduates to engage in “employment” on F-1 visas “following completion of studies.”

In general, 8 U.S.C. § 1324a does not confer on DHS any authority to allow aliens to work. It merely prohibits *employers* from hiring unauthorized aliens. *See Guevara v. Holder*, 649 F.3d 1086, 1095 (9th Cir. 2011) (holding that there was “nothing in the statute [8 U.S.C. § 1324a] or administrative regulation to provide for more” than “merely allow[ing] an employer to legally hire an alien (whether admitted or not) while his [adjustment of status] application is pending.”).

The exclusion of those “authorized to be employed by ... the Attorney General” from the statutory definition of “unauthorized alien” simply makes the section work rationally with the rest of the

⁴ The only statutory definition of *student* that IRLI has found which could be interpreted to extend to the post-completion period is 20 U.S.C. § 1232g(a)(6) (Family educational and privacy rights). This definition applies provisions governing privacy of student records to graduates as well as current students. However, 8 U.S.C. § 1372(c)(2) expressly exempts SEVIS records of aliens in F, J and M status from FERPA privacy protections.

⁵ In its summary of the pending “Washtech” litigation, DHS incorrectly insinuates that the U.S. district court did *not* rule on “whether the agency’s regulation is substantively deficient under 5 U.S.C. § 706.” 80 FR 63381; *see also Wash. Alliance of Tech. Workers v. United States Dep’t of Homeland Sec.*, 2015 U.S. Dist. LEXIS 105602 *47-48 (D.D.C. Aug. 12, 2015). In fact, the only judicial ruling to date is that the DHS interpretation was “not unreasonable.” *Id.* The District Court “withholds judgment on the issue of whether the agency has marshaled sufficient evidence to support its [2008] rule.” *Id.* at *46.

Immigration Reform and Control Act of 1986 (“IRCA”). 8 U.S.C. § 1324a(h)(3)(B). Other sections of IRCA contain seven specific mandatory directives for the Attorney General to authorize aliens without visas, but who are in the legalization process, to engage in employment. *See* IRCA § 201 (“Legalization”) 100 Stat. 3397, 3399 (two), § 301 (“Lawful Residence for Certain Special Agriculture Workers”) 100 Stat. 3418, 3421 (two), 3428. In the absence of the clause “or by the Attorney General” in § 1324a(h)(3)(B), such aliens would have been authorized to work but it would be illegal for employers to hire them. *See*, S. Rep. 99-132, p. 43 (“An alien employed as a transitional worker and in possession of a properly endorsed such work permit or other documentation shall, for purpose of INA section 247A, be considered to be authorized by the Attorney General to be so employed during the period of time indicated on such documentation.”). Nothing in the legislative history of IRCA or subsequent federal legislation regarding the employment of aliens supports DHS’ proposed novel interpretation of § 1324a.

In the *Washtech v. DHS*, Civil No. 14-cv-00529 (D.D.C.) litigation, DHS has cited a Ninth Circuit opinion, *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014) in support of its interpretation. However, the Ninth Circuit *Arizona Dream Act* is directly contradicted on that point by another opinion, *Guevara v. Holder*, cited above. In *Guevara*, the Ninth Circuit held that there was “nothing in the statute [8 U.S.C. § 1324a] or administrative regulation to provide for more” than “merely allow[ing] an employer to legally hire an alien (whether admitted or not) while his [adjustment of status] application is pending.” *Id.* at 1095.

Finally, the Fifth Circuit has just rejected—in emphatic terms—the use of the “miscellaneous definitional provision expressly limited to § 1324a” by the Secretary to construe § 1324a(h)(3), as we also see in the NPRM, as a legal mechanism to allow him to grant lawful presence and work authorization to any illegal alien in the United States—an untenable position in the light of the INS’s “intricate system of immigration classifications and employment eligibility.” *Texas v. U.S.*, No. 15-40238, at 62. Similarly, the attempt in the NPRM to justify the extension of “duration of status” for F-1 students at 8 U.S.C. §1101(a)(15)(F)(i) to include three years of post-completion full-time employment, by resort to this now-discredited agency interpretation of §1324a(h)(3), would be unlawful agency action in excess of statutory jurisdiction under the APA. 5 U.S.C. §706(2)(C).

(4) The NPRM is procedurally and substantively arbitrary and capricious.

DHS has entirely failed to provide a reasoned explanation of *why* its published policy rationale for the proposed rule has so fundamentally changed from that provided for the 2008 NPRM that it now replaces.

An agency must show on the record that it has satisfied its obligation to supply a reasoned analysis when it departs from past policy. *Comité de Apoyo a los Trabajadores Agrícolas v. Perez*, 774 F.3d 173, 187 (3d Cir. 2014) (citing 5 U.S.C. § 706(2)(D)). Without such analysis in the record, a reviewing court may conclude that an agency has taken action without complying with procedures required by law. *Id.* When making a shift in policy, an agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)). Federal courts will set aside an agency’s action as “arbitrary and capricious” if the agency does not provide a “reasoned explanation” for its change in course. *Massachusetts v. EPA*, 549 U.S. 497, 534-35 (2007); *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (holding that “unexplained inconsistency” in agency practice is a reason for holding a policy reversal “arbitrary and capricious” under the APA, unless “the agency adequately explains the reasons for a reversal of policy”); see *State Farm*, 463 U.S. at 42-43.; see also *CBS Corp. v. FCC.*, 663 F.3d 122, 145 (3d Cir. 2011).

DHS justified the 2008 OPT Rule by asserting the need to provide labor to United States employers to remedy an alleged “critical shortage” of labor. 73 F.R. 18944, 18947 (Apr. 8, 2008). DHS then used this illegitimate rationale to issue the 2008 OPT Rule in violation of the APA, as an “interim final rule,” on the now discredited ground that “the ability of U.S. high-tech employers to retain skilled technical workers, rather than losing such workers to foreign business, is an important economic interest for the United States” that “would be seriously damaged” if “not implemented early this spring [of 2008].” *Id.*, at 18950. That rationale remains arbitrary because the NPRM fails to identify even a scintilla of evidence that the U.S. has since lost skilled technical workers to foreign business to the extent that any “important economic interest” has been “seriously damaged.”

The current NPRM provides a completely different but equally arbitrary justification for the proposed rule: “[T]he revisions proposed by this rule are intended to continue and further enhance the academic benefit of the STEM OPT extension, while protecting STEM OPT students and U.S. workers.” 80 F.R. 63381. “DHS recognizes the substantial ... benefits provided by the F-1 nonimmigrant program generally, and the STEM OPT extension in particular... through the payment of tuition and other expenditures in the U.S. economy, as well as by significantly enhancing academic discourse and cultural exchange on campuses.... In addition to these general benefits, STEM students further contribute through research innovation, and the provision of knowledge and skills that help maintain and grow... important sectors of the U.S. economy.” *Id.*

The NPRM summary provides no evidence of a measurable “academic benefit” other than increased income for U.S. institutions of higher education. However this benefit is irrelevant to the OPT program, where F-1 students do NOT pay tuition, at premium or standard rates, to the academic institution from which they received a STEM degree. Similarly, STEM OPT employment by definition does not and cannot, as proposed, provide “enhance[ed] academic discourse and cultural exchange on campuses.” In the NPRM DHS also fails to cite to any scientifically valid research documenting any research innovation that was actually achieved by any F-1 alien while in OPT STEM status. And finally but strikingly, the brazen bad faith of the agency regulators is on display in its claim that the OPT STEM program provides “knowledge and skills” to the U.S. economy, when the stated purpose of the current NPRM is purportedly to allow F-1 aliens the opportunity to acquire knowledge, skills, and experience, notably through occupational training pathways that are not open to similarly situated U.S. citizen STEM graduates. *See* 80 F.R. 63393 (the proposed regulation “will enhance... the objectives of their courses of study ... through on-the-job-training that is often not available in their home countries.”).

The objectives of the NPRM conflict not only with the claimed objectives in the 2008 rule—now vacated by the district court in *Washtech*, *see* 80 F.R. 63381—but with the carefully balanced employment authorization scheme in the INA. The most important statutory goal with which the NPRM conflicts is to “protect against the displacement of workers in the United States,” *INS v. Nat’l Ctr. For Immigrants’ Rights*, 502 U.S.183, 194 (1991).

A second is the INA’s “primary purpose in restricting immigration is to preserve jobs for American workers.” *Id.* INA § 212(a)(5)(A), designates as inadmissible “any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor” unless the Secretary of Labor—not DHS—has “determined and certified” that such employment will not adversely affect the employment, wages or working conditions of “workers in the United States similarly employed.” 8 U.S.C. § 1182(a)(5)(A). The statute unambiguously links performance of labor by aliens with employment of U.S. workers. Nonimmigrant aliens who have already been admitted in F-1 status were exempted from labor certification only because, under the IRC and SSA provisions discussed above in Part (1), they were not admitted to perform such labor. F-1 status aliens who engage in post-completion OPT employment have thus “failed to maintain the nonimmigrant status in which the alien was admitted,” making these aliens deportable. 8 U.S.C. § 1227(a)(1)(C)(i).

The NPRM is also substantively arbitrary because the agency has failed to consider essential and relevant factors in the explanation provided in the NPRM summary, in violation of 5 U.S.C. § 706(2)(A) (an agency action may be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”). An agency acts arbitrarily and capriciously if it “has relied

on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm*, 463 U.S. at 43; *see also FEC v. Rose*, 806 F.2d 1081, 1088 (D. C. Cir. 1986); *Nazareth Hosp. v. Sec’y of HHS*, 747 F.3d 172, 179 (3d Cir. 2014) (“Agency action is arbitrary and capricious if the agency offers insufficient reasons for treating similar situations differently.”).

The summary of the Executive Order 12866/13563 cost-benefit analysis asserts that OPT workers to be covered by the NPRM “will enhance... the objectives of their courses of study ... through on-the-job-training that is often not available in their home countries.” 80 F.R. 63393. However, nowhere in the NPRM has DHS provided any evidence or reference to expert authority indicating that such training is *not* available overseas, nor does it identify any mechanism in existing 8 C.F.R. § 214 or in the proposed amendments to 8 C.F.R. § 214.2(f) or (g), to establish that the availability of home country practical training has even the slightest relevance to approval of a STEM OPT approval application by a Designated School Official (“DSO”) or oversight and review of such employment by DHS. There is a similar complete lack of evidence or reference to expert authority in the NPRM for the claim that the duration of the proposed OPT extension period for STEM degree holders should be 24 months rather than a shorter period “due to the complexity and typical durations of research, development, testing and other projects commonly undertaken in STEM fields.” *See* 80 F.R. 63385. These two sweeping unsupported generalizations, applied uncritically across all nations world-wide in the first instance and all degree levels and the very diverse set of STEM occupational fields and entities employing STEM-qualified personnel in the second, are a paradigm of capricious justification in federal rulemaking.⁶

The clearly arbitrary character of the agency’s justification for the current STEM OPT extension regulations is due in significant part to the failure of the agency to diligently consider the full range

⁶ The NPRM insinuates that the “general duration of projects to be pursued by students on STEM OPT extensions” justifies the proposed rule, and points to work “often involving a grant or fellowship application, management of grant money, focused research—and publication of a report.” 80 F.R. 63385. However, these projects utilizing research associates are more appropriately classified as “curricular practical training” (“CPT”) because they are in almost all cases a direct extension of the STEM curriculum in which the F-1 alien obtained his qualifying degree. *See* 8 C.F.R. § 214.2(f)(100(i) (defining CPT as ““alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school.”)). IRLI does not object to CPT or its current regulatory scheme.

of contemporary research on the employment of F-1 status aliens and its relation to the employment of H-1B alien specialty workers. This omission is particularly notable given the failure of DHS to adequately document a looming emergent loss of alien STEM workers in its NPRM issued in connection with the now-vacated 2008 OPT Rule. Had DHS consulted in advance with the American citizens adversely affected by the OPT program, as well as its alien beneficiaries, the agency could have avoided the problem of relying solely on sources funded by employers of cheap alien workers to justify the Rule.

IRLI respectfully directs the agency's attention to two easily available annotated research bibliographies that are easily accessible on the internet: (1) AFL-CIO, Department for Professional Employees, *Annotated H-1B and L-1 Visa Bibliography* (October 2013), and (2) Norman Matloff, University of California Davis Department of Computer Science, *Annotated Research Bibliography: H-1B/Green Card/STEM Labor Shortage Issues* (October 15, 2014). The bibliographies are attached as Exhibits A and B for the convenience of the agency, which has repeatedly stated that it lacks the resources to fully perform its statutory mandates. However, such claims of institutional penury cannot exempt the agency from its rulemaking obligations under the APA.

(5) The OPT program described in the NPRM would impermissibly facilitate prohibited employment-related discrimination on the basis of alienage and national origin by academic institutions and employers.

DHS has requested comments on the feasibility and effectiveness of proposals summarized in Part G of the NPRM summary: *Safeguarding U.S. Workers Through Measures Consistent With Labor Market Protections*. 80 F.R. 63388-90.

By allowing F-1 visa holders in post-completion academic status—but not similarly situated United States citizens—to work for up to three years while exempt from withholding of FICA, FUTA and Social Security taxes, and also providing such aliens—but not United States citizens—eligibility for federally-mandated “mentoring” agreements as a required pathway to employment, any academic institution authorized by DHS to administer the proposed post-completion OPT programs would intentionally violate civil rights law prohibiting discrimination in the making of contracts, employment, and on-the-job training. 42 U.S.C. § 1981(a); 42 U.S.C. § 1983; 42 U.S.C. § 2000e-2(a),(d); 8 U.S.C. § 1324b(a)(1)(A) and (B). Even if DHS had absolute discretionary authority over the classification of employees who are in F-1 status, and had undertaken a balanced and complete review of relevant factors, the proposed rule would still be unlawful under the APA because it would constitute an abuse of discretion, not in accordance with law, in excess of statutory jurisdiction and short of statutory right. *See* 5 U.S.C. § 706(2)(A), (C).

First, as explained in Part (1), a United States citizen who has completed a STEM degree recognized by the proposed rule is barred by law from eligibility for the exemptions from payroll taxation available by law to an alien whose duration of F-1 status is defined and extended pursuant to the proposed 8 C.F.R. § 214.2(f)(5)(vi). Second, that United States citizen is also ineligible per the NPRM to apply to STEM employers for practical training employment under a Mentoring or Training Plan. Proposed 8 C.F.R. § 214.2(f)(10)(ii)(C) expressly requires that an agreement in the form of a contract be executed on Form I-910 (Mentoring and Training Plan) by (1) an F-1 alien applying for OPT STEM employment, (2) the proposed employer, and (3) the DSO, on behalf of the academic institution. *See* § 214.2(f)(10)(ii)(C)(4)-(7).

Per its plain text, the § 1981 prohibition on discrimination in making contracts applies to “all persons,” which necessarily includes both citizens and non-citizens. 42 U.S.C. § 1981(a); *see also Graham v. Richardson*, 403 U.S. 365, 375, (1971). Supreme Court and circuit court precedent hold that § 1981 (1) protects “all persons” against discrimination, (2) applies to U.S. citizens, and (3) protects against so-called “reverse discrimination.” *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 274, 285 (1976); *Takahashi v. Fish and Game Comm’n*, 334 U.S. 410, 419 (1948); *Sagana v. Tenorio*, 384 F.3d 731, 738 (9th Cir. 2004).

Section 1981 does not include the term “alien.” But courts recognizing prohibited discrimination have used the terms “alienage” and “citizenship” interchangeably. *See, e.g., Jimenez v. Servicios Agricolas Mex, Inc.*, 742 F. Supp. 2d 1078, 1985-86 (D. Ariz. 2010); *Martinez v. Partch*, 2008 U.S. Dist. LEXIS 4162, 2008 WL 113907, at *2 (D. Colo. Jan. 9, 2008) (using “citizenship discrimination” and “alienage discrimination” interchangeably); *Chacko v. Tex. A&M Univ.*, 960 F. Supp. 1180, 1191 (S.D. Tex. 1997) (“section 1981 must be construed to prohibit private discrimination on the basis of citizenship.”); *Cheung v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 913 F. Supp. 248, 251 (S.D.N.Y. 1996) (“The Supreme Court has held that section 1981 also prohibits states from enacting laws which discriminate on the basis of citizenship.”).

Where the OPT employer would be a state agency or entity, such as a public research or higher education institution, employment of a STEM graduate in F-1 status would be barred by 8 U.S.C. § 1983, which provides United States citizen students and employers who must pay payroll taxes on STEM graduates who are not in F-1 status with a remedy for a violation of §1981 liability. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 735 (1989).

Other features of the proposed rule that are indicative of discriminatory intent are the Cap-Gap rule changes, which repeat the proposal under the 2008 NPRM to allow “benching” of F-1 OPT

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beneficiaries who are awaiting approval for a change of status to H-1B, *see* 80 F.R. 63391, and the proposal to expand OPT eligibility to former graduates who have not left the United States, *see* 80 F.R. 63388.

The hiring scheme for F-1 aliens with STEM degrees proposed in the NPRM would also constitute immigration-related employment discrimination under 8 U.S.C. § 1324b(a)(1)(A) and (B). Per proposed 8 C.F.R. §§ 214.2(f)(10)(ii)(C)(4)-(7), the Form I-910 applicant and the entire proposed hiring process and conditions for employment for F-1 status STEM graduates would exclude United States citizens and aliens admitted for lawful permanent residence. The proposed OPT STEM hiring and extension process would also constitute national origin discrimination, as the program is clearly intended to benefit aliens whose nationality is among one of the nations for which employment-based immigrant visas are continuously oversubscribed, in particular nationals of India and China.

In conclusion, this public comment warns the agency that the proposed OPT extension rule, in its present form, cannot possibly be found to comply with controlling federal law.

Respectfully Submitted,

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IRLI EXHIBIT A

Annotated Research Bibliography: H-1B/Green Card/STEM Labor Shortage Issues

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<http://heather.cs.ucdavis.edu/matloff.html>

October 15, 2014

This document summarizes what I regard as the major research papers on the issues of the H-1B work visa, employer-sponsored green cards and claims of a STEM labor shortage. Here I use the word *major* to mean either that the paper is widely cited or has important findings, not necessarily that I find the analysis to be valid.

Some points to keep in mind:

- **Funding of a research project matters.** Some of the research projects listed below are sponsored by organizations with industry financial ties.^[1]
- **Peer review matters.** Generally speaking, research that has been vetted by peer review in a professional journal has much more validity than do unpublished working papers. However, journal papers can be flawed too, and working papers often have valuable, if yet unconfirmed, insights.

The bibliography follows.

1. **Bound (2006):** J. Bound, S. Turner and P. Walsh, Internationalization of U.S. Doctorate Education, in *Science and Engineering Careers in the United States: An Analysis of Markets and Employment*, R. Freeman and D. Goroff (eds.), University of Chicago Press, 2006.

Found that the foreign students doing STEM graduate work at U.S. universities tend to attend weaker, less prestigious institutions:

In physics, biochemistry, and chemistry much of the expansion [from the mid-1980s to mid-90s] in doctorate receipt to foreign students occurs at unranked programs or those ranked outside the top 50; the growth in foreign students in engineering is distributed more evenly among programs. Among students from China, Taiwan, and South Korea growth has been particularly concentrated outside the most highly ranked institutions.

2. **Brown (1998, 2009).** Clair Brown *et al*, 1998, *The Perceived Shortage of High-Tech Workers*, unpublished working paper, 1998, and Clair Brown and Greg Linden, *Chips and Change*, MIT Press, 2009.

This paper explained the link between the foreign student influx in engineering and the stagnant engineering wages. The 2009 book noted, as did the 1989 NSF document (see Weinstein (1998) below), that this is especially true at the graduate level, and that employers welcome the chance to pay lower wages at that level.

*Interested readers should read my short synopsis of H-1B issues, at <http://heather.cs.ucdavis.edu/h1b10min.html>, and my collection of quotes of industry people and others on this topic, at <http://heather.cs.ucdavis.edu/h1bquotes.html>.

¹I have not sought, nor have I received, funding for any of my H-1B research papers.

3. **Costa (2012):** Daniel Costa., *STEM Labor Shortages? Microsoft Report Distorts Reality on Computer Occupations*, EPI, 2012.²

Excellent exposure of Microsoft PR claims on H-1B.

4. **Freeman (2005):** Richard Freeman, *Does Globalization of the Scientific/Engineering Workforce Threaten U.S. Leadership?*, unpublished NBER Working Paper No. 11457, June, 2005.

Finds that STEM professionals lost ground in the 1990s relative to those in the law and medicine, due to the foreign STEM influx.

5. **Hanson (2014):** Gordon Hanson and Matthew Slaughter. *Facts and Fallacies about High-Skilled Immigration and the American Economy*, CompeteAmerica report, 2014.

This research is funded by an industry consortium, CompeteAmerica. It has the usual flaws, such as not accounting for skill sets (see Lofstrom (2012) below).

The authors concede the point made by Salzman *et al* (see Salzman (2013) below) that STEM wages have been flat, thus contradicting the claim of a labor shortage. But they contend that the reason wages are flat is that some work is done by foreign workers, abroad or in the U.S. If that were truly the case (I disagree), then why do the authors say we need more H-1Bs? Flat wages would say we have enough already, if not too many.

The authors also state that although STEM wages have remained flat, non-STEM wages have fallen. This is obfuscating the issue; lack of rising wages means lack of a shortage, period.

6. **Hart (2009):** David M. Hart, Zoltan J. Acs, and Spencer L. Tracy, Jr., *High-tech Immigrant Entrepreneurship in the United States*, SBA report, 2009.

Finds a lower rate of immigrant tech entrepreneurship than do other researchers.

Most interesting is the breakdown by national origin. Even though 64% of the tech H-1Bs are from India, only 16% of the important immigrant tech entrepreneurs have come from India. I am not advocating that the H-1B program favor workers from certain countries, but Hart's findings do suggest that current H-1B policy is not generally selecting the most promising workers. This meshes with my own findings (see Matloff (2013b) below).

7. **Hira (2007):** Ronil Hira, *Outsourcing America's Technology and Knowledge Jobs: High-Skills Guest Worker Visas Are Currently Hurting Rather Than Helping Keep Jobs at Home*, EPI, 2007.

Showed that, contrary to the industry threat, "If we can't hire enough H-1Bs, we'll be forced to ship the work abroad," the H-1B and L-1 programs are often used to facilitate sending work abroad.

(I would add, though, that whether a job is sent overseas or a worker is brought here from abroad, that is one fewer job available to Americans. H-1B is not "better" than offshoring in terms of tech jobs for Americans.)

8. **Hunt (2009, 2011)** Jennifer Hunt, *Which Immigrants Are Most Innovative and Entrepreneurial?*, Working Paper 14920, 2009. Cambridge, Mass.: National Bureau of Economic Research, 2009, and same title, *Journal of Labor Economics*, Vol. 29, No. 3, pp. 417-457, 2011.

The working paper is the more informative version, as the author was asked to remove H-1Bs from the analysis in the final published version.

The author found that, relative to comparable Americans, the H-1Bs are paid less, and they file fewer patent applications per capita.³ In the case of patents, the result also is true when restricted to the former foreign students, the industry's prized group.

²Several papers listed here are published by the Economic Policy Institute (EPI), a labor-oriented organization. EPI does not generally fund research other than its own internal projects. As far as I know, none of the works here had EPI funding.

EPI is an interesting special case in another sense. Though EPI does not have a journal, its published papers are peer-reviewed. My own EPI paper, Matloff (2013b), underwent the most rigorous scrutiny I've ever experienced in all my years in academia.

³The author published an earlier paper on patenting that was more favorable to H-1Bs, but this was not on a per-capita basis.

9. **ITAA (1997):** Stuart Anderson,⁴ *Help Wanted: The IT Workforce Gap At the Dawn of a New Century*, Information Technology Association of American, 1997.

This report by an industry lobbying organization played a key role in Congress' near-doubling of the H-1B cap in 1998. As such, one passage is especially revealing:

Training employees in IT would seem to be a win-win for both worker and employer. And often that is the case. However, extensive training creates other issues. "You take a \$45,000 asset, spend some time and money training him, and suddenly he's turned into an \$80,000 asset," says Mary Kay Cosmetics CIO Trey Bradley. That can lead to another problem. New graduates trained in cutting edge technologies become highly marketable individuals and, therefore, are attractive to other employers.

It is clear that Bradley is not willing to pay the salaries paid by other firms. The ITAA was claiming at the time that qualified IT workers were in short supply, and training in new skills took too long, so that the industry had to resort to hiring H-1Bs. Yet Bradley's remark shows that the main issue is money, not available workers and not time to learn a new tech skill. Note that Matloff (2003) discusses the issue of skill-learning time in depth, showing it is not an important issue with quality workers.

10. **Kerr (2010):** William Kerr and William Lincoln, 2010, The Supply Side of Innovation: H-1B and Ethnic Innovation, *Journal of Labor Economics*, Vol. 28, No. 3.

Finds that the more Chinese and Indian H-1Bs come to the U.S., the larger the number of patent applications filed by ethnic Chinese and Indians. This says little, almost a tautology. The authors also find some evidence of a possible small crowding-in effect on Americans.

11. **Kerr (2014):** Sari Pekkala Kerr, William R. Kerr, and William F. Lincoln, Skilled Immigration and the Employment Structures of U.S. Firms. *Journal of Labor Economics* (forthcoming, 2014).

Takes a firm-level point of view, exploring relations between the numbers of immigrant skilled workers at a firm and various other job numbers at the firm.

From the paper's Conclusion section: "We find consistent evidence linking the hiring of young skilled immigrants to greater employment of skilled workers by the firm, a greater share of the firm's workforce being skilled, a higher share of skilled workers being immigrants, and a lower share of skilled workers being over the age of 40...there is limited evidence connecting actual departures of workers to the hiring of young skilled immigrants...[the analysis here] suggests that departure rates for older STEM occupations may be higher."

Note that this stops short of the "H-1Bs create new jobs" claims made by the industry. And while it does mildly support my own findings that one of the primary uses of the H-1B program is to avoid hiring older Americans, I am very hesitant to embrace this paper.

First, much of the analysis relies on a controversial statistical technique known as *instrumental variables*, which even proponents of the method concede can be difficult to do properly. Second, the analysis concerns only workers who are already at a firm, rather than who is hired from the applicant pool in the first place, and thus is unable to address the question of whether H-1Bs are hired instead of Americans. Third, while it examines the impact of hiring skilled immigrant workers, it does not look at the impact of hiring skilled American workers; my EPI paper on the quality of H-1Bs would suggest that the American impact would be greater than the immigrant impact.

12. **Lofstrom (2012):** Magnus Lofstrom and Joseph Hayes, 2012, *H-1Bs: How Do They Stack Up to U.S. Workers?*, IZA Discussion Paper 6259, December.

Research funded by an industry-related think tank PPIC⁵ presented in a pro-immigration forum (IZA).

Many factual errors, e.g. a statement that employers must give hiring priority to Americans over H-1Bs.

Finds that the H-1Bs are paid at least as much as the Americans, and possibly slightly more.

⁴The report is shown without naming an author, but Anderson's authorship was later reported in the press.

⁵PPIC is funded by the Packard Foundation, which in turn is funded by Hewlett-Packard stock

Major flaws: (a) Does not systematically take geography into account, which matters as wages vary widely by region. (b) Does not take tech skill sets into account; this matters, as the industry claims to hire H-1Bs for their rare skill sets, which typically command around a 20% wage premium. In other words, this paper's wage figures are off by about 20%. (c) They look only at wages at the time of hire, thus failing to sample the H-1Bs at times during which they are most underpaid, since H-1Bs receive smaller raises than comparable Americans.

13. **Matloff (2003):** Norman Matloff, On the Need for Reform of the H-1B Non-immigrant Work Visa in Computer-Related Occupations (invited paper), *University of Michigan Journal of Law Reform*, Fall 2003, Vol. 36, Issue 4, 815-914.

The most extensive peer-reviewed, published general research paper on H-1B and related issues to date (99 pages, 300+ footnotes).

Extensive material on job vacancy rates, tech skill sets, age discrimination in tech, underpayment of H-1Bs, etc.

14. **Matloff (2006):** Norman Matloff, On the Adverse Impact of Work Visa Programs on Older U.S. Engineers and Programmers (invited paper), *California Labor and Employment Law Review* (a publication of the California State Bar Association), August 2006.

Demonstrates how the influx of H-1Bs, who are overwhelmingly young, fuel the rampant age discrimination in the tech fields, starting at the "old" age of 35.

An important facet is specialized skill sets, say Android programming. The industry acknowledges that there are many older programmers available for work, but that they have not updated their skill sets. This paper of mine (and the University of Michigan one cited above, Matloff (2003)) shows this to be a red herring.

Most programmers love learning new technologies, and do so constantly. Of course there are countless different technologies, so no one knows them all, but most older programmers have had the experience of applying for a job for which they have an exact skills match, but then be quickly rejected, without even a phone call. As former CEO (and current promoter of foreign-worker programs) Vivek Wadhwa has stated, "...even if the [older] \$120,000 programmer gets the right skills, companies would rather hire the younger workers. That's really what's behind this."

Again, the training issue is a red herring. Competent programmers can learn a new technology quickly, on the job, without formal training. The industry has always claimed that it can't afford this, as it needs to hire people who can "hit the ground running." Yet this was belied by the *BusinessWeek* report ("Vancouver, the New Tech Hub," May 22, 2014) that Microsoft, Facebook and so on are training foreign programmers who they hire but temporarily "park" in Vancouver, BC while waiting for U.S. visas; see also ITAA (1997) above on this point.

15. **Matloff (2013a):** Norman Matloff, 2013, Immigration and the Tech Industry: As a Labour Shortage Remedy, for Innovation, or for Cost Savings?, *Migration Letters*.

Using a multi-pronged approach, demonstrates that tech industry H-1Bs are on average underpaid relatively to their actual market value.

Note that this underpayment is in almost all cases done in full compliance with the law, exploiting gaping loopholes. See my University of Michigan paper above, Matloff (2003), for details, but I would note here that even Rep. Zoe Lofgren, a strident advocate of expanding the H-1B program, recognizes the problem, as noted in *Computerworld*, March 31, 2011: "Lofgren said that the average wage for computer systems analysts in her district is \$92,000, but the U.S. government prevailing wage rate for H-1B workers in the same job currently stands at \$52,000, or \$40,000 less. 'Small wonder there's a problem here,' said Lofgren. 'We can't have people coming in and undercutting the American educated workforce.'" Unfortunately, none of Lofgren's bills regarding H-1B would even come close to fixing the problem.

Shows the flaws in widely-cited studies that claim the H-1Bs are not underpaid.

Shows that, to many employers, the immobile nature of H-1Bs is even more attractive than saving on salary. See also Mukhopadhyay (2013) below.

Explains how the U.S. tech workers, and the economy in general, are harmed by the H-1B and related programs. This is particularly true for American workers over age 35.

For this reason, proposals in Congress that would grant automatic green cards to new foreign graduates of U.S. universities would be harmful, as the vast majority of the foreign grads would be young, exacerbating the age discrimination problem.

Note carefully that the analysis here excluded the IT outsourcing firms. Thus it showed that the U.S. mainstream firms, i.e. the Intels and the Microsofts, do abuse the H-1B program too, albeit on a higher class of worker. This is important, since the industry claims that the main abuse of H-1B occurs with the outsourcing firms; on the contrary, the abuse occurs throughout the industry. See my Bloomberg View op-ed, "Stop Blaming Indian Companies for Visa Abuse," <http://www.bloombergvview.com/articles/2013-08-26/stop-blaming-indian-companies-for-visa-abuse> for more on this crucial point.

16. **Matloff (2013b):** Norman Matloff, *Are Foreign Students the Best and Brightest? Data and Implications for Immigration Policy* (invited paper), EPI, 2013.

Analysis of the tech industry's most prized category of H-1Bs—foreign students who graduated from U.S. universities and who then joined the U.S. workforce, in the fields of computer science and electrical engineering.

Contrary to the industry's claim (that they never offer statistical evidence to support) that these H-1Bs are "the best and the brightest," this paper demonstrates that in the computer science field, the H-1Bs are significantly weaker than the Americans, in terms of patenting, research and development work, quality of graduate institution and so on. In the case of electrical engineering, the foreign students are not superior to the Americans in any category, and are weaker in some categories.

Cites other research with similar findings, notably Bound (2000) above and D. Goroff, eds., *The Science and Engineering Workforce in the United States*. Chicago, Ill.: National Bureau of Economic Research/University of Chicago Press, and the work of J. Hunt cited earlier in this document.

As with my *Migration Letters* paper above, Matloff (2013a) the analysis here excluded the IT outsourcing firms.

17. **Mithas (2010):** S. Mithas, and H. Lucas, Are Foreign IT Workers Cheaper? United States Visa Policies and Compensation of Information Technology Professionals, *Management Science*, May, 2010.

Severely handicapped by the nature of its data set, mainly managers, marketers and the like, not mainstream engineers.

The paper finds that H-1Bs are paid 2.6% more than Americans, which the authors ascribe to the H-1Bs having rare skill sets. But those skills command a premium of about 20% on the open market, so that the Mithas and Lucas findings actually show that the H-1Bs are underpaid.

The authors note, correctly, that due to lack of mobility, H-1Bs⁶ are underpaid relative to their true market value (consistent with the above), getting much larger salaries after attaining green cards. Attempts to quantify the difference.

18. **Mukhopadhyay (2013):** S. Mukhopadhyay and D. Oxborrow, The Value of an Employment-Based Green Card, *Demography*, February. 2013.

Attempts to measure the underpayment to H-1Bs due to their immobility while waiting for a green card. Some possible methodological issues.

19. **NRC (2001):** National Research Council, *Building a Workforce for the Information Economy*, Washington, D.C.: National Academies Press, 2001.

This study was commissioned by Congress.

In a direct survey of a broad variety of employers, found that they admitted to paying H-1Bs less than comparable Americans. The paper found no evidence of an IT labor shortage, and it found that older workers in IT face major obstacles in the labor market.

⁶The ones being sponsored for green cards, i.e. those hired by the mainstream U.S. firms such as Intel and Microsoft.

20. **Peri (2008):** Giovanni Peri and Chad Sparber, Highly-Educated Immigrants and Native Occupational Choice, working paper, 2008, and Giovanni Peri, Immigration, Labor Markets and Productivity (essay), Giovanni Peri, *Cato Journal* (libertarian), Winter 2012.

Unlike later papers by Peri and coauthors that were favorable to the H-1B program and others like it, these two are rather negative. The first paper finds that STEM immigrants displace Americans from the field, in that the STEM immigration results in fewer U.S. natives in STEM:

...we assess whether native-born workers with graduate degrees respond to an increased presence of highly-educated foreign-born workers by choosing new occupations with different skill content.

...we add to evidence from past studies by showing that [U.S.] native occupational adjustment in response to immigration occurs among highly-educated workers and occurs for those already employed.

As the foreign-born share of highly-educated employment rises, native-born employees respond by moving to jobs with less quantitative and more interactive content.

The wage consequences of immigration were not estimated in this paper...If the evidence from the labor market for less-educated workers is an indication, the occupational skill response among highly-educated natives is likely to mitigate their potential wage loss from highly-educated immigration.

In that last paragraph, the authors seem to believe that the natives suffer at least some wage loss due to the displacement. This is consistent with the second paper listed above, in which Peri states that the immigrants make less than natives in the same jobs, and pitches this as a boon to employers. He devotes an entire section of the paper to this point, titled “Lower Wages of Immigrants: an Opportunity for Cost Cutting and Job Creation”:

One common empirical finding in the literature is that immigrants are paid less than natives with similar characteristics and skills. This is in part due to the fact that many immigrants, because of less attractive outside options (such as having to go back to their home country), have lower bargaining power with the firm. In this case firms pay immigrants less than their marginal productivity, increasing the firms’ profits.

21. **Peri (2014):** Giovanni Peri *et al*, 2014a, *STEM Workers, H1B Visas and Productivity in U.S. Cities*, working paper, and 2014, *Closing Economic Windows: How H-1B Visa Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession*, Partnership for a New American Economy.

Peri’s online CV says that he has received \$50,000 in research support from Microsoft, and the second paper is published by an industry political group, presumably accompanied by funding for Peri’s research. These considerations may explain why there are issues here of lack of balance.

Among other things, these papers violate fundamental academic principles by not citing any research critical of H-1B. Of the 42 references listed in the first paper’s bibliography, there are none whatsoever that are negative about the visa program. One can certainly disagree with contrary findings, but they do have to be cited and explained.

The 2014a paper is too technical to discuss in detail here, but I will summarize by saying that the paper uses controversial methodology (instrumental variables, as with the Kerr papers) and does not present convincing evidence that that methodology accounts for changing economic conditions. It also makes a number of questionable assumptions.

The 2014b paper features a clever approach, but is overly simple. It is not detailed enough to account for the dynamics of the IT labor market. For example, suppose H-1Bs are brought in to replace American IT workers in a certain firm. Typically the American managers remain, and since managers generally have higher salaries, the average salary of the Americans at the firm increases—even though none of them individually gets a raise. The departure of the lower-wage Americans results in a higher mean for those who remain, thus incorrectly making it seem like the influx of H-1Bs causes the Americans’ to rise.

At any rate, the findings of both of the Peri papers are starkly at odds with the broad consensus among economists that the H-1B program suppresses wages, by sheer supply-and-demand considerations. That was the conclusion of the Brown, Freeman, NRC and NSF studies cited above. Former Fed chief Alan Greenspan has stated repeatedly that H-1B suppresses IT wages.

22. **Rothwell (2013):** Jonathan Rothwell and Neil G. Ruiz, *H-1B Visas and the STEM Shortage*, Brookings, 2013.

Brookings has close financial ties to Microsoft and other firms in the industry. According to Brookings' *Annual Report 2013*, they had over \$1,000,000 in donations from Microsoft, over \$1,000,000 from the Bill and Melinda Gates Foundation, over \$1,000,000 from the William and Flora Hewlett Foundation (i.e. HP), over \$500,000 from Qualcomm, over \$250,000 from Google, etc. Brookings has often included a panelist from Microsoft in almost all of their presentations on H-1B, and their research on H-1B is the most cited work in the statements of the industry lobbyists and their allies. The authors make fundamental errors in statistical methodology⁷ But this is rather minor compared to the fundamental flaws, the same as in Lofstrom (2012) above, since they use the same data set: (a) they do not take into account skill sets; (b) they do not account for geography; and (c) they look only at wages at the time of hire, thus failing to sample the H-1Bs at times during which they are most underpaid, since H-1Bs receive smaller raises than comparable Americans.

23. **Salzman (2013):** Hal Salzman, Daniel Kuehn and B. Lindsay Lowell, 2013, *Guestworkers in the High-Skill U.S. Labor Market: an Analysis of Supply, Employment, and Wage Trends*, EPI.

In-depth analysis. Finds no general STEM labor shortage. Lack of a shortage is shown via flat wages.

24. **Teitelbaum (2014):** Michael Teitelbaum, 2014, *Falling Behind?: Boom, Bust, and the Global Race for Scientific Talent*, Princeton University Press.

Shows a long history of false claims of STEM labor shortages in the U.S., and analyzes the motivations for such claims.

25. **Wadhwa (2007):** V. Wadhwa *et al*, 2007, *Intellectual Property, the Immigration Backlog, and a Reverse BrainDrain: America's New Immigrant Entrepreneurs, Part III*, Duke University Fuqua School of Business.

Survey of employers, in which HR departments were asked directly whether they were having difficulty in finding qualified engineers. The answer was that they were not having problems in this regard, and were not having to resort to offering hiring bonuses and so on.

Wadhwa is an outspoken advocate of foreign worker programs, but even he has publicly stated that the H-1B is widely abused, saying for instance, "I know from my experience as a tech CEO that H-1Bs are cheaper than domestic hires. Technically, these workers are supposed to be paid a 'prevailing wage,' but this mechanism is riddled with loopholes."

26. **Weinstein (1998):** Eric Weinstein, *How and Why Government, Universities, and Industry Create Domestic Labor Shortages of Scientists and High-Tech Workers*, Cambridge, Mass.: National Bureau of Economic Research, 1998.

This paper is of major importance, analyzing an internal 1989 document in the National Science Foundation, the main science funding agency in the federal government. The NSF actively promoted the establishment of the H-1B program in 1990.

The NSF document correctly forecast that the large influx of STEM foreign students would suppress wages at the PhD level. It also projected, again correctly, that the stagnant wages would drive American students away from STEM doctoral programs.

In the latter light, note the more recent statement by Cisco Systems Vice President for Research Douglas Comer, "...a Ph.D. in computer science is probably a financial loser in both the short and long terms" (*Science Careers*, April 11, 2008).

Note too the October 5, 2011 testimony to the House Subcommittee on Immigration Policy and Enforcement by Darla Whitaker of Texas Instruments. Ms. Whitaker stated that TI has plenty of engineering applicants with Bachelor's degrees, and thus does not hire foreign workers at that level. She stated TI does hire H-1Bs, and sponsors them for green cards, at the Master's and PhD levels, where she says there is a shortage. When asked why the Americans don't go on to graduate school, Whitaker didn't have much to say, but the answer is clear from the above material.

⁷For those who know regression analysis, an example is that they treated their Education variable, coded 5/6/7 for Bachelor's/Master's/PhD, rather than setting up two dummy variables.

The NSF document also advocated giving automatic green cards to new foreign grads at U.S. schools, just as in current proposals in Congress. Since NSF also concedes that this would give American students disincentives to study STEM, the autogreen proposal is clearly ill-advised.

27. **M. Zavodny (2011):** M. Zavodny. *Immigration and American Jobs*, American Enterprise Institute for Public Policy Research and the Partnership for a New American Economy, 2011.

Research funded by, and published by, industry organizations.

Does a state-by-state comparison, “In states with more immigrants, are US natives more or less likely to have a job?”, especially with respect to H-1B. This is a highly unreliable approach, as states vary from one another by more than just the numbers of H-1Bs.

IRLI EXHIBIT B



Annotated H-1B and L-1 Visa Bibliography

Introduction

This annotated bibliography compiles recent research and articles that cover H-1B and L-1 guest worker visas. The bibliography touches upon the central areas of controversy, including wages and working conditions, the supply of high-skilled workers, and employer misuse of guest worker visas.

General

Department for Professional Employees, AFL-CIO. *Gaming the System: Guest Worker Programs and Professional and Technical Workers in the U.S.* Washington, DC: Department for Professional Employees, AFL-CIO, 2012.
Comprehensive review of guest worker programs in the United States, including the H-1B, L-1, B, and OPT guest worker programs.

Marshall, Ray. *Immigration for Shared Prosperity: A Framework for Comprehensive Reform* Washington, DC: Economic Policy Institute, 2009.
Outlines a framework for comprehensive immigration reform, including the creation of a professional commission that would assess and manage future foreign labor flows. Ray Marshall is professor emeritus and holder of the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the LBJ School of Public Affairs, University of Texas at Austin and served as secretary of labor in the Carter administration.

Marshall, Ray. *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom.* Washington, DC: Economic Policy Institute, 2011.
Thorough analysis of the immigration systems in Canada, Australia, and the United Kingdom, which serves as a platform to suggest reforms to the U.S. immigration system. Marshall notes that “in highly competitive globalized economies, markets untempered by moderating policies and institutions will produce declining real incomes for many—if not most—workers and unsustainable inequalities in income and wealth.” Marshall makes several recommendations for improving the H-1B visa program, including adopting and enforcing a clear standard, raising the wage standard, and increasing the availability of data.

Thibodeau, Patrick. “H-1B at 20: How the ‘Tech Worker Visa’ is Remaking IT in America,” *Computerworld*, November 17, 2010.
http://www.computerworld.com/s/article/9196738/H_1B_at_20_How_the_tech_worker_visa_is_remaking_IT_in_America

Outlines some of the effects H-1B visas have had on U.S. tech workers. Article touches upon issues of offshoring, companies whose workforce is largely made up of H-1B visa beneficiaries, and the increased use of the Optional Practical Training program to get around H-1B visa rules and fees.

U.S. Department of Homeland Security. U.S. Citizenship and Immigration Services. *Characteristics of H1B Specialty Occupation Workers. Fiscal Year 2009 - 2012 Annual Report to Congress.* <http://tinyurl.com/yzje8vg>

Report to congress, updated annually. Details a variety of H-1B visa data, including ages, occupation, industry, country of origin, and education level of H-1B beneficiaries.

Wages and Working Conditions

Hira, Ron. *Bridge to Immigration or Cheap Temporary Labor? The H-1B and L-1 Visa Programs are a Source of Both.* Washington, DC: Briefing Paper #257, Economic Policy Institute, February 17, 2010. <http://www.epi.org/publication/bp257/>
Examines the question of why so few employers sponsor H-1B and L-1 workers for permanent residence in the U.S. Identifies numerous examples of U.S. companies claiming that temporary visa recipients are among the best and brightest workers who must be allowed to work in the U.S., but then failing to take steps to make them permanent residents and thereby giving them more rights in the workplace.

Hira, Ron. *The H-1B and L-1 Visa Programs Out of Control.* Washington, DC: Briefing Paper #280, Economic Policy Institute, October 14, 2010. <http://www.epi.org/publication/bp280/>
Outlines the major flaws in the H-1B and L-1 visa programs, including absence of a labor market test, inadequate wage standards, and insufficient oversight. Employers realize a significant wage savings by utilizing H-1B visas—a practice that substantially harms U.S. workers.

Matloff, Norman. “How Widespread Is the Use of the H-1B Visa for Reducing Labor Costs?” Georgetown University Conference on Dynamics of the S&E Labor Market. July 11, 2011. <http://heather.cs.ucdavis.edu/SloanDCPaper.pdf>
Paper provides detailed analysis of how H-1B beneficiaries are legally underpaid, including not using skill set or education when determining the applicable wage. Employers also save money hiring young H-1B beneficiaries in lieu of U.S. workers over the age of 35 whose experience makes them more expensive. In effect, H-1B visas give employers access to a revolving door of young, cheap workers.
Dr. Matloff is a professor of computer science at the University of California, Davis. He blogs extensively on the issue of guest worker visas. See: <http://heather.cs.ucdavis.edu/h1b.html>

Skills Gap/Labor Shortage

Costa, Daniel. *STEM Labor Shortage? Microsoft Report Distorts Reality about Computing Occupations.* Washington, DC: Policy Memorandum #195, Economic Policy Institute, November 19, 2012. <http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/>

Impeaches a report by Microsoft Corporation that claims an impending tech worker shortage. Costa notes the flaws in the Microsoft report, pointing out the supply of tech workers comes from more than just bachelor's degree programs, the tech-worker unemployment rate was higher than its historical average, and wages in computer occupations for the last 10 years have been largely stagnant.

Finegold, David. "The Modern Indentured Servants." Rutgers University, School of Management and Labor Relations Blog, June 22, 2011, <http://smlr.rutgers.edu/modern-indentured-servants>.

Highlights the exploitive nature of H-1B and L-1 visas, including low wages, lack of portability, and high unemployment of U.S. workers. Finegold suggests a strict test to determine the existence of a labor shortage before a visa is issued, raising the wage standards, and continuing assistance to U.S. workers who have been displaced by foreign trade or offshoring.

David Finegold is the former dean of the Rutgers School of Management and Labor Relations.

Matloff, Norman. *Are Foreign Students the 'Best and Brightest'? : Data and implications for immigration policy.* Washington, DC: Briefing Paper #356, Economic Policy Institute, February 28, 2013. <http://www.epi.org/publication/bp356-foreign-students-best-brightest-immigration-policy/>

Debunks the myth that foreign graduates of U.S. universities are exceptionally talented. Found, through rigorous analysis, that "former foreign students have talent lesser than, or equal to their American peers."

Salzman, Hal, Daniel Kuehn, and B. Lindsay Lowell. *Guestworkers in the High-Skill U.S. Labor Market: An analysis of supply, employment, and wage trends.* Washington, DC: Briefing Paper #459, Economic Policy Institute, April 24, 2013.

<http://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/>
Evaluates the strength of the U.S. science, technology, engineering, and mathematics (STEM) workforce. Found that the U.S. has a sufficient supply of STEM workers. A large influx of guest workers will continue to keep IT wages low which reduces the incentive for U.S. workers to go into the field.

Toppo, Gregg and Dan Vergano. "Scientist Shortage? Maybe Not," *USA Today*, July 9, 2009. http://usatoday30.usatoday.com/tech/science/2009-07-08-science-engineer-jobs_N.htm

Questions the argument that the U.S. has a shortage of science, technology, engineering, and mathematics (STEM) professionals. Details unemployment rates, graduation rates, and available funding for research in STEM fields.

Weissmann, Jordan. “The Myth of America’s Tech-Talent Shortage.” *The Atlantic*, April 2013. <http://www.theatlantic.com/business/archive/2013/04/the-myth-of-americas-tech-talent-shortage/275319/>

Examines the supply and demand for tech labor and finds there is no evidence of worker shortages justifying widespread H-1B visa use. Weissmann notes that in the past he supported increasing the H-1B visa cap. However, upon further research he has reversed his position.

Government Review of Skilled Worker Visa Programs

Sherrill, Andrew. “H-1B Visa Program: Multifaceted Challenges Warrant Re-examination of Key Provisions.” Testimony before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, House of Representatives. March 31, 2011. <http://www.gao.gov/products/GAO-11-505T>

Government Accountability Office testimony notes several factors that limit the government’s ability to fully enforce H-1B laws and regulations, including limited government power to: screen employers, investigate wage and hour violations, and hold staffing companies that displace U.S. workers accountable.

U.S. Department of Homeland Security, Office of Inspector General. *Implementation of L-1 Visa Regulations*. Washington, DC: OIG-13-107, August 2013.

http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-107_Aug13.pdf

Office of Inspector General (OIG) review of the L-1 visa program that examines the potential for fraud or abuse in the L-1 visa program. OIG identified a number of problems that increase the opportunity for fraud and abuse in the L-1 visa program and made recommendations for improvement.

United States Government Accountability Office. *H-1B Visa Program: Reforms Are Needed to minimize the Risks and Costs of Current Program*. Washington, DC: GAO-11-26, January 2011. <http://www.gao.gov/products/GAO-11-26>

Government Accountability Office (GAO) review of the impact of the H-1B “cap on the ability of domestic companies to innovate, while ensuring that U.S. workers are not disadvantaged.” GAO found that demand for new H-1B workers was driven by a small number of employers—mostly India-based companies that specialize in offshoring. GAO also found that “restricted agency oversight and statutory changes weaken protections for U.S. workers.”

Employer Misuse of Guest Worker Visas

Costa, Daniel. *Abuses in the L-Visa Program: Undermining the U.S. Labor Market*.

Washington, DC: Briefing Paper #275, Economic Policy Institute, August 13, 2010.

http://www.epi.org/publication/abuses_in_the_l-visa_program_undermining_the_us_labor_market/

A comprehensive survey of the use and abuse of the L-1 visa. The report details how L-1 visas are used by employers to replace U.S. workers with temporary visa holders, but first requiring U.S. workers to train their foreign replacements. Finally, the report makes recommendations for improvement of the L-1 visa.

Herbst, Moira and Steve Hamm. “America’s High-Tech Sweatshops,” *Bloomberg Businessweek Magazine*, October 1, 2009.

http://www.businessweek.com/magazine/content/09_41/b4150034732629.htm

Provides detailed accounts of H-1B visa fraud, including charging illegal fees to recruited workers, employers not paying promised wages, and not paying visa beneficiaries when they are between projects. The article also outlines egregious abuse of guest workers by body shops—firms that specialize in the supply of labor.

For more information on professional and technical workers, check DPE’s website:
www.dpeaflcio.org.

The Department for Professional Employees, AFL-CIO (DPE) comprises 20 AFL-CIO unions representing over four million people working in professional and technical occupations. DPE-affiliated unions represent: teachers, college professors, and school administrators; library workers; nurses, doctors, and other health care professionals; engineers, scientists, and IT workers; journalists and writers, broadcast technicians and communications specialists; performing and visual artists; professional athletes; professional firefighters; psychologists, social workers, and many others. DPE was chartered by the AFL-CIO in 1977 in recognition of the rapidly growing professional and technical occupations.

Source: DPE Research Department
815 16th Street, N.W., 7th Floor
Washington, DC 20006

Contact: Jennifer Dorning
(202) 638-0320 extension 114
jdorning@dpeaflcio.org

October 2013

From: Bob Dane <bdane@fairus.org>
Sent: Thursday, February 22, 2018 10:17 AM
To: Law, Robert T
Subject: RE: I was wrong

Extreme example below, but many other lesser ambiguities without it. Have to break with Charles Krauthammer's disdain for it. He often calls it a "pestilence" on grammar.

Without Oxford comma:

Oprah Winfrey finds joy in cooking her family and her dog.

Bob Dane
Executive Director
Federation for American Immigration Reform
25 Massachusetts Avenue, NW, Suite 330
Washington, DC 20001
(202) 328-7004 | FAIRus.org



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From: Law, Robert T [<mailto:robert.t.law@uscis.dhs.gov>]
Sent: Wednesday, February 21, 2018 10:16 AM
To: Bob Dane <bdane@fairus.org>
Subject: RE: I was wrong

Bob, I never thought this day would come! What inspired the change in position?

From: Bob Dane [<mailto:bdane@fairus.org>]
Sent: Thursday, February 15, 2018 6:02 PM
To: Law, Robert T
Subject: I was wrong

Rob,

Just so you know, after much deliberation of the issue and months of weighing your passionate arguments, I concede to the full utilization of the Oxford comma.

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From: David Ray <dray@fairus.org>
Sent: Monday, June 18, 2018 1:36 PM
To: Junge, Paul
Cc: Law, Robert T; Bob Dane
Subject: Re: Introduction

Paul, nice meeting you as well and thanks Rob, for the introduction. This afternoon is a little bit crazy here but I'm available tomorrow afternoon at 2:30 or three for a call. Do either of those times work for you? Best, Dave

Dave Ray, communications director, FAIR
202.368.7872
Dray@fairus.org

On Jun 18, 2018, at 2:29 PM, Junge, Paul <paul.junge@uscis.dhs.gov> wrote:

Rob-

Thank you for the introduction.

Bob/Dave-

Good to meet you both. I would look forward to coming by for an in person introduction or a meeting over coffee or lunch sometime soon.

If either of you had time for a phone conversation – even this afternoon – that would be great.

Paul Junge
U.S. Citizenship and Immigration Services
External Affairs Directorate
Department of Homeland Security
Office: (202) 272-8046
Mobile: [REDACTED] (b)(6)
Email: Paul.Junge@uscis.dhs.gov

From: Law, Robert T
Sent: Monday, June 18, 2018 2:17 PM
To: Bob Dane; dray@fairus.org
Cc: Junge, Paul
Subject: Introduction

Bob/Dave,

Hope all is well, busy times as always. I wanted to introduce you to Paul Junge, one of the politicals in our external affairs directorate. Paul, Bob and Dave are good people to know.

Robert Law
Senior Advisor
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
202-272-8409 (work)
(b)(6) [REDACTED] (cell)

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From: Dale Wilcox <dwilcox@irli.org>
Sent: Tuesday, July 24, 2018 9:00 AM
To: 'Morgen, Hunter M. EOP/WHO'; Law, Robert T; Wold, Theo J. EOP/WHO
Subject: RE: Introduction

Thank you Rob.

Theo and Hunter:

Pleasure to make your acquaintance. Founded in 1986, IRLI is a public-interest legal education and advocacy law firm dedicated to achieving responsible immigration policies that serve national interests. We are the *only* law firm that represents the interests of the American people on the immigration issue in the U.S. We have been busy defending the president's policies throughout the U.S. in the myriad of lawsuits brought by the open-borders crowd. However, we do much more. We have three other departments: investigations, legislation/regulation, and communications. In our past work with John Zadrozny, we have used these departments to advance the president's policies. Please let us know what we can do for you.

Best regards,

Dale L. Wilcox

Executive Director & General Counsel



25 Massachusetts Ave. NW, Suite 335
Washington, DC 20001
Tel: (202) 232-5590
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www.irli.org

To learn more about IRLI's national network of attorneys, click [here](#).

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From: Morgen, Hunter M. EOP/WHO [mailto:Hunter.M.Morgen@who.eop.gov]
Sent: Tuesday, July 24, 2018 9:23 AM
To: Law, Robert T; Wold, Theo J. EOP/WHO
Cc: Dale Wilcox
Subject: RE: Introduction

Thanks for the intro Rob. Always good to have a strong outside coalition.

From: Law, Robert T <robert.t.law@uscis.dhs.gov>
Sent: Tuesday, July 24, 2018 9:13 AM
To: Wold, Theo J. EOP/WHO <Theodore.J.Wold@who.eop.gov>; Morgen, Hunter M. EOP/WHO <Hunter.M.Morgen@who.eop.gov>
Cc: dwilcox@irli.org
Subject: Introduction

Theo/Hunter,

I wanted to introduce you to Dale Wilcox, copied here, who is the Executive Director of the Immigration Reform Law Institute (IRLI). IRLI does great legal work assisting the administration's immigration agenda. JZ used to work with Dale on a number of initiatives and IRLI will continue to be an asset to the DPC.

-Rob

Robert Law
Senior Advisor
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
202-272-8409 (work)
(b)(6) (cell)

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